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Current Topics.

The New Judge.

ON MR. JUSTICE TOMLIN'S promotion to the position of Lord of Appeal in Ordinary, there was practical unanimity of opinion in the profession as to the choice likely to be made by the Lord Chancellor in filling the vacancy in the Chancery Division. Events have fulfilled the general expectation. The new judge, Mr. LUXMOORE, K.C., has for a number of years been one of the outstanding leaders of the Chancery Bar. Called at Lincoln's Inn in 1899, he was one of the thirty-nine silks created—after an unusually long interval due to the war—by Lord BIRKENHEAD in 1919, and, attaching himself to Mr. Justice ASTBURY'S court, he was early recognised as one of the coming men. In addition to his wide experience of equity and chancery practice gained both as junior and as leader, he comes to the bench equipped with a practical acquaintance with local administration, obtained as Mayor of New Romney, that pleasant old-world little town not far from which he has his country residence. He has been engaged in many big cases, one of the last of them being *Vane* v. *Famous Players Film Co.*, which occupied many days before Mr. Justice ASTBURY and took five days in the Court of Appeal. The question was one of fact rather than of law, namely, whether there had been an infringement by the defendant's film of the copyright in a well-known play. The case was interesting in view of the literary research shown by all concerned in it, and by the further fact that the judges were shown the film in an improvised cinematograph theatre in one of the court rooms. By his admirably clear analysis of the evidence Mr. LUXMOORE succeeded in convincing the majority of the Court of Appeal that Mr. Justice ASTBURY'S conclusions could not be supported. As a judge, we feel confident Mr. LUXMOORE will fulfil the high expectations which his appointment has engendered.

Traffic Law at Turnings.

IN A running-down case brought by a motor-cyclist before Judge TURNER at Westminster recently, the plaintiff, who collided head-on with a car in Drury Lane, said that he hooted at the corner, heard no reply, saw nothing ahead, accelerated, and then "had the car upon him." To which his Honour replied: "If you hoot and hear nothing and buzz ahead you are asking for trouble. Taxi-drivers in London are not perpetually hooting. If every motor-driver hooted always at corners, then every corner would be a bear-garden . . . you have to rely on sight. Sound does not carry through brick walls."

Comment might perhaps be made by those dwelling in crowded streets that taxi-drivers in London *are* perpetually hooting, every motor-driver *does* hoot always at corners, and every corner *is* a bear-garden. The learned judge lays down, however, that it is the duty of a driver to see the way clear at a corner, and not to assume that it is so from the absence of an answering signal. The report is silent as to whether the defendant heard the plaintiff's hoot, and as to the relative importance of the two roads. Consideration of collisions at cross-roads, and of the relative duty of the driver in a "main" road and a "cross" road, appears so far to be a monopoly of Scottish courts, and the authorities will be found collected and discussed in *Buntin or McNair* v. *Glasgow Corporation*, 1923, S.C. 397, and *Hutchison* v. *Leslie*, 1927, S.C. 95. Section 3 of the Locomotives on Highways Act, 1896, requires every light locomotive to carry a "bell, or other instrument capable of giving audible and sufficient warning of the approach or position of a carriage," and the Motor-Cars (Use and Construction) Order, 1904, Art. IV (5), requires him "whenever necessary" by sounding the bell or other instrument to give audible and sufficient warning of his approach and position. The above decision of Judge TURNER leaves the legal effect of sounding bell, horn, or hooter somewhat dubious. In *Lankester* v. *Miller*, 1910, 3 B.W.W.C. 80, a workman's compensation case, in which the issue of liability depended on the alleged negligence of a third party, it was held by the Court of Appeal that the fact of driving when the hooter was out of order was not *primâ facie* evidence of negligence; though the driver might have been liable to penalty. There is, of course, a clear decision that a paralytic pedestrian has a right to walk on a road (see *Boss* v. *Litton*, 1832, 5 C. & P. 407), and, no doubt, therefore, a deaf one also, who could not hear any warning. Possibly, then, the hoot gives no legal right or protection to the motorist who sues or is sued for negligence. The wise pedestrian who hears the imperative horn, however, will get out of the way rather than stand on his legal rights, for, as the Irishman observed, "it is better to be a coward for five minutes than dead all the rest of your life."

The Road for the Swift.

THE CASE above as to the paralytic pedestrian applies not only to country roads and lanes where no footpath is provided, but to the great arterial roads of England and the main streets of her busiest cities. To these roads and streets apply also such decisions as *Hadwell* v. *Righton*, 1907, 2 K.B. 345, and *Heath's Garage, Ltd.* v. *Hodges*, 1916, 2 K.B. 370. In these cases it was laid down that dogs and sheep may lawfully gambol on the highway without liability for negligence on the part of their owners, and, although the ruling that the same law applies to fowls was not necessary for the decision in *Hadwell* v. *Righton*, anyone who argued that fowls were out of place on a road where cars were passing at the rate of one every two seconds would have to prevail on the judge to overrule the very strong *obiter dicta* then appearing on the matter.

As a contrast, the exceedingly strict rules in regard to level crossings of railways may be observed—and, of course, however convenient it might be as a short cut, no railway may be used as a public footpath. Yet, as a matter of common sense, it would be far less dangerous to walk along the main line of a railway, with trains passing every few minutes along definite tracks, than in the middle of a main road out of London, where cars are passing each other, sometimes at the speed of express trains, every few seconds. The question of differentiation between the law of a country lane and a main road appears now to be ripe for consideration. In certain cities abroad, pedestrians have now fixed places for crossing busy thoroughfares, traffic is stopped for them periodically at those places, and they are forbidden to cross otherwise. It may be conceded that the English pedestrian public is hardly yet ready to accept this loss of liberty. Yet, in streets where policemen regulate traffic, and crossings are indicated, it might be laid down that a pedestrian who crosses otherwise does so at his own peril, and is responsible for any accidents caused by his presence on the road. And to require a pedestrian to walk on the footpath provided for him on an arterial road would be merely asking him to do what anybody with sense would do without compulsion. Conversely, the invasion of motor cycles on public commons and moorlands, and the incursion of motor traffic generally, and motor coaches in particular, on narrow country lanes, might be regulated as the price of greater speed and safety on the tracks especially constructed for them. A 50 or even a 60-mile speed limit along a straight stretch of main road with no turnings might be off-set by a rigorously applied twenty-mile limit along a country lane.

Police Courts and the Empire.

No figures appeared in the recently published "Civil Statistics" to show how the Maintenance Orders (Facilities for Enforcement) Act, 1920, is working, and to what practical purpose. Some meagre information may be obtained from the "Criminal Statistics" for 1926, though why it should be included in that volume is puzzling. A footnote to Table XI states that "18 Maintenance Orders made outside the United Kingdom were registered by Courts of Summary Jurisdiction and 15 Provisional Orders were confirmed. None of these were enforced by imprisonment or detention. Under the same Act 44 Orders were sent for registration and 122 Provisional Orders were sent for confirmation and enforcement by Courts in His Majesty's dominions outside the United Kingdom." But we are not told how many of the 122 Provisional Orders sent for confirmation were in fact confirmed, nor how many of the forty-four Orders sent for registration were in fact registered. In the same way it is impossible to say what proportion of the Orders sent from the dominions to this country for registration and confirmation were actually registered and confirmed. The Act is an interesting experiment, but so great are the practical difficulties which beset the applicant for an Order, that the percentage of applications which end successfully in securing alimony for the wife must be small. To begin with, the law of desertion and maintenance is sufficiently complicated in itself. Added to this is the anomalous nature of the procedure—the witnesses for the prosecution appear before one tribunal and those for the defence before another. It is difficult to anticipate what defence will be put forward, and if a plausible case is made out for the husband, his unchallenged contentions usually ensure his discharge. Many applications break down because the overseas court cannot find the defendant. Often the accomplishment of this task defeats its very purpose. The man, usually a rolling stone, has not gone to the other side of the world to be so easily caught. He packs his kit and moves on, sometimes into another state, sometimes even into another dominion or colony. Dr. Johnson summed up the difficulties of such proceedings very aptly. "We talked," writes Boswell, in the *Life*, 28th April, 1783, "of the accusation against a gentleman (Warren Hastings) for supposed delinquencies in India. Johnson: 'What foundation there is for the accusation I know not; but they will not get at him. Where bad actions are committed at so great a distance, a delinquent can obscure the evidence until the scent becomes cold; there is a cloud between which cannot be penetrated.'" For all this the police courts would be the poorer without these novel cases. The experiment is a tangible indication that the Empire is no mere constitutional fiction but a real and co-operating whole. There is something that stirs the imagination when we find a humble police court with a jurisdiction ordinarily confined to a half-dozen obscure villages or to a few acres of grey streets listening gravely to the story of the omissions and commissions of a gentleman who perhaps at the moment is deep in the Indian jungle or upon some vast Australian sheep farm.

Wrongful Assumption of Professional Description.

The need for vigilance with regard to the above is shown by two recent cases. At Leeds The Law Society proceeded under the Attorneys and Solicitors Act, 1874, s. 12, against a defendant who had filled in a præcipe, and in the presence of the chief plaint clerk had signed himself as "Albert Rishworth, solicitor." The official knew the defendant as a builder, and pointed out the wrong description, but the defendant said he had been apprenticed to a solicitor, whom he named, who was a well-known practitioner about twenty-five years ago. The defendant's alleged debtor produced in evidence a receipt for the amount claimed, and stated that after payment he had received a typed note and a summons, both describing the defendant as a solicitor. The defendant alleged that he was told at the County Court to describe himself as a solicitor, but the learned stipendiary magistrate felt sure that was untrue, and imposed a fine of 40s. and two guineas costs. The above offence is also punishable under the County Courts Act, 1888, s. 180, as stated in a County Court Letter entitled "Imitation of Process of the Court," in our issue of the 3rd November, 1928, 72 Sol. J. 739. Another aspect of the same matter was revealed in the recent case of *Storr* v. *Holtby, White and Co. Ltd.*, at Bridlington County Court, in which the plaintiff sued for damage to a motor car, caused by fire at the defendants' premises. His Honour Judge Beazley held that there was no negligence, and gave judgment for the defendants, but he pointed out that a witness for the plaintiff had stated on oath that he was a member of the Institute of Chartered Accountants of England and Wales. That statement was admittedly untrue, but the explanation that the witness was excited and flurried, and did not realise its importance, was accepted. His honour pointed out, however, that the evidence of witnesses as to their qualifications forms a most important part of their testimony, and great care must be taken as to its being correct.

Excuses for Breach of Promise.

In a recent breach of promise action in the High Court the defence apparently was that the plaintiff was addicted to an objectionable habit. It is somewhat surprising to find such a defence set up in view of the fact that a mere habit, however irritating or even disgusting it may be, has never been deemed an adequate defence to an action for breach of promise. Indeed, apart from the defendant being released from his promise by mutual release or refusal of an offer of performance, there are only three defences which will be considered sufficient, namely, the fact that the promise was induced by misrepresentation or fraud, the bad character of the plaintiff, or a mental or bodily infirmity. As to the latter the law does not seem to be in a very satisfactory state. Of course, the fact that the plaintiff in the present case suffered from nettle-rash could not possibly be regarded as a satisfactory excuse for non-performance of the marriage, as it is difficult to see how the case of *Atchinson* v. *Baker*, 1797, Peake, Add. Cas. 103,

could be stretched so as to cover it (in that case the plaintiff suffered from an abscess). In view, however, of modern notions of inheritance, it would seem very unfair that a defendant who had been unaware, at the time of his engagement, that the defendant had been in an asylum, should be compelled either to marry her or be mulcted in damages: see *Baker* v. *Cartwright*, 1861, 10 C.B. (N.S.) 124. In cases such as the present, where it is obvious that there is no legal excuse and the promise and the breach thereof are admitted, it is somewhat astonishing that the defendant allows the case to come to trial as he so often does, thereby exposing himself to much unnecessary publicity and expense.

The Rating of Collieries.

THE SCALE governing the assessment of collieries was revised in the case of the *Consett Iron Company Limited* v. *Lanchester Assessment Committee*, at the last Durham Quarter Sessions. The rateable value had been ascertained by multiplying the output, over an average of two years, by a scale which varied from 3½d. per ton for seams 1 foot 6 inches thick to 8½d. per ton for seams over 6 feet thick. The case for the appellants was that the scale was out of date as regards their Medomsley, Langley Park, Westwood, Humber Hill and Derwent pits, which were working at a loss and legally ought not to be assessed at all. The appellants were prepared to accept a nominal assessment, however, as it was recognised that the effect of arriving at assessments on a profits basis would be to render local government impossible. The case for the respondents was that (1) the scale, although a rule of thumb, was a fair and proper method of arriving at rateable values, and had been established for many years; (2) the collieries had been modernised and were well equipped; and (3) the assessment was low compared with pre-war years, especially in view of the depreciation of sterling. The court reduced the extremes of the above scale to 2d. and 7d. respectively, and allowed costs to the appellants. It was suggested during the hearing that the judgment would not only affect coalowners in Durham, but others throughout the country, as it was a matter of national concern as to whether there should be any rateable value in the absence of profits.

Too Much of a Bad Thing.

A CASE reported from Southend, in which it is said that a wife, only eighteen years old, and married only eighteen months, has just obtained her third separation or maintenance order against her husband, is perhaps an extreme instance, but it illustrates the comparative ease with which dissatisfied wives can obtain magisterial orders nowadays. Inasmuch as the two previous orders had come to an end by the resumption of voluntary cohabitation, it is permissible to assume that the wife cannot really have regarded her husband as an impossible partner. Separation orders are a most proper form of relief when married life has become intolerable and when the wife's health or safety is in question. They are even then only a regrettable necessity and a remedy for a worse state of things; but they are certainly not desirable in themselves. The girl—for she is no more—in the Southend case can hardly have given married life a fair trial if she has had three separations in eighteen months. It would be instructive to learn whether the same bench gave her all three orders, and whether any efforts at reconciliation through a missionary or a probation officer have been attempted.

Hospitals and Patients.

CASES INVOLVING the question of the liability of hospital authorities towards the patients under treatment are happily rare, a circumstance which of itself is eloquent testimony to the efficiency with which the arduous functions of our hospitals are carried out. But occasionally the legal relationship of hospital authorities and patients has engaged the attention of the courts. In the well-known case of *Hillyer* v. *The Governors of St. Bartholomew's Hospital*, 1909, 2 K.B. 820, it was laid down by the Court of Appeal (1) that the relation of master and servant does not exist between a hospital authority and the surgeons and physicians whom it may supply for the treatment of patients, and (2) that the nurses on the staff while actually engaged in assisting a surgeon during an operation are so immediately subject to his orders and control that they are for the time being to be regarded as not the servants of the hospital. But in the course of his judgment in that case, Lord Justice KENNEDY said, *obiter*, that he should be prepared to hold that a hospital authority "is legally responsible to the patients for the due performance by their servants within the hospital of their purely ministerial or administrative duties, such as, for example, attendance of nurses in the wards, the summoning of medical aid in cases of emergency, the supply of proper food and the like." Two recent decisions in Canada have in fact placed this liability upon hospital authorities. In the first of these, *Nyberg* v. *Provost Municipal Hospital Board*, 1927, 1 D.L.R. 969, it was held that a public hospital board is liable for the negligence of even duly qualified nurses employed by it in the performance of all duties other than those done under the direct orders of a physician or surgeon in the course of an operation. In the second case, *Logan* v. *Colchester County Hospital Trust*, 1928, 60 Nova Scotia Reports, 62, the plaintiff, a lady, entered the defendants' hospital for the purpose of undergoing an operation, and owing to the fact that the regular nursing staff was not sufficient to give her the necessary attention, a special nurse was employed and added temporarily to the regular staff, but charged to the plaintiff. Owing to the negligence of the special nurse so employed—not during the operation—the plaintiff was injured. It was held that the plaintiff was entitled to recover damages from the hospital authority, the special nurse being held to be the employee of the hospital authority who were therefore liable for her negligence.

Withdrawal of Criminal Charge.

SOME DISCUSSION took place last week in a trial before Mr. Justice MCCARDIE at the Central Criminal Court on the subject of the procedure to be followed when it was desired to drop a criminal charge brought before magistrates. Counsel is reported to have said that it was the knowledge of the court that was the governing thing always, and that if a withdrawal should take place before a magistrate, the magistrate must, in case of an indictable offence, send the papers to the Director of Public Prosecutions. The relevant statutory provision is part of s. 5 of the Prosecution of Offences Act, 1879, which reads as follows: "It shall be the duty of every clerk to a justice or to a police court to transmit, in accordance with the regulations under this Act, to the Director of Public Prosecutions a copy of the information and of all depositions and other documents relating to any case in which a prosecution for an offence instituted before such justice or court is withdrawn or is not proceeded with within a reasonable time." The section is not, in terms, limited in its application to indictable offences, but in practice we believe it is customary to comply with it only in serious cases, most of which are, of course, indictable. The actual duty, it is to be observed, is in this particular matter cast upon the clerk, and not upon the justices, though doubtless he would be guided to some extent by their directions. With regard to the position of the solicitors where a withdrawal is contemplated, the learned judge expressed his view that there was no more delicate or more uncertain branch of the law. In particular there is the obvious difficulty, also indicated by his lordship, as to who is to take the first step. "Delicate" is undoubtedly the right word. We can only suggest that practitioners should exercise the utmost caution in any proposals not made in the presence of the court. The trial referred to ended in the acquittal of the defendant. Our remarks have no reference to the facts of that case.

Criminal Law and Police Court Procedure.

JUSTICES EJECTMENT WARRANTS.—The Small Tenements Act, 1838, provides thatt he obtaining of one of these warrants when the applicant had not at the time "the lawful right to the possession of the premises" shall be deemed a trespass by him against the tenant or occupier, although no entry shall be made, and that judgment in favour of the tenant in respect of that statutory trespass shall invalidate the warrant. An action in the county court for nominal damages for such statutory trespass is a cheap method of appealing in fact, although not in form, against the justices' decision to issue an ejectment warrant. An action of this kind in *Appleby* v. *Jenkinson* was brought in the Sheffield County Court, in which the plaintiffs alleged that the defendant had not the lawful right to possession because of the provisions of the Rent Restrictions Acts. On the 29th ult. His Honour Judge LIAS gave judgment for the defendant on the grounds that the justices and the county court were courts of concurrent jurisdiction; that there was nothing in the Rent Restrictions Acts that conferred a right of appeal from the justices to the county court, and that in this case the plaintiffs ought to have appealed to the King's Bench Division by a case stated. The Rent Restrictions Acts confer some kind of title to retain possession upon a statutory tenant, because s. 15 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, prescribes the conditions of a statutory tenancy and there is such a title as is capable of being divested by the tenant being adjudicated bankrupt, or by a closing order being made (*Reeves* v. *Davies*, 1921, 2 K.B. 486; *Blake* v. *Smith*, *ibid.*, 685). Unless the landlord could bring his application within the provisions of the Rent Restrictions, the statutory tenant and not the landlord would have the lawful right to possession. It seems to us that as the county court has jurisdiction to try actions for 40s. damages for trespass, it ought to have heard this case on its merits, and that his honour's judgment is of doubtful authority.

EVIDENCE OF GOOD CHARACTER.—The *Goddard Case* provided an instance of the limits to the value of evidence of a defendant's good character as part of the defence to a criminal trial. There was a man who could adduce abundant testimony of his good service and high reputation, but it apparently weighed little or nothing with either judge or jury, and rightly so, because the evidence for the prosecution was overwhelming. It is only when the evidence is such as to leave the issue in the balance that good character thrown into the scale may be decisive.

"Phipson on Evidence" states the matter adequately: "It has been held, however, that such evidence does not stand on precisely the same plane as that concerning the relevant facts going to prove or disprove the issue, but that the jury is only entitled to take into consideration the good character of the defendant when the other facts proved leave them doubtful of his guilt: *R.* v. *Broadhurst*, 13 Cr. App. R. 125, C.C.A."

SPIRITUALISTS AND THE VAGRANCY ACTS.—Journals devoted to psychic research have lately renewed their outcry against what they consider the unfairness of the law in its application to spiritualists. One periodical has just published two articles dealing with alleged police oppression of so-called fortune-tellers.

It is quite possible to sympathise, for once, with both sides. If there be oppression, it is not by the fault of the police, who find it difficult to refuse to take action when there is definite complaint made to them of what appears to be a breach of the law. The spiritualist, on the other hand, feels that it is unjust to treat as a criminal, and to label as rogue and vagabond (this seems to hurt them most of all), people who believe in spiritualism and practise it as part of their religion in perfect honesty and sincerity.

Any practitioner who has had experience of fortune-telling prosecutions knows that there are two very different classes of offenders: the charlatans who make money by mischievous prophecies, often obviously fraudulent in their motives and methods, and the well-meaning spiritualists who believe that, having certain gifts, they ought to employ them helpfully. The second class does, undoubtedly, often bring itself within the meshes of the criminal law, unintentionally, by venturing upon predictions. In a recent case this was said to have been done by a medium in a state of trance, and she felt that she herself was not responsible for what a "control" said through her mediumship.

Clearly the law needs overhauling. Very few of those convicted under a century-old statute and adjudged to be rogues and vagabonds deserve any such description if words are given their proper meaning. The case law on the subject of intention to deceive has given rise to some confusion at times, and it must often be irksome for judges and magistrates to administer a law which is almost universally admitted to be out-of-date, and sometimes harsh, in its present form.

JUVENILE COURTS AND PRIVACY.—The *Notts Guardian* of 26th January records an interesting point which arose at a juvenile court at Coalville.

The public had not been admitted, but a number of solicitors and a few other persons were present. The clerk said that, strictly speaking, the court should be cleared.

Mr. T. H. MOORE said that advocates were usually allowed to remain.

The clerk said the law was very clear on the point. Only officials, the parties concerned, and the Press were allowed to be present.

Mr. MOORE argued that solicitors were officers of the court. He had never heard of their being asked to leave before.

Another solicitor agreed that solicitors were officials, but said he was not going to argue the point. If there was any question about it he would retire.

The clerk remarked that there were others present who were not solicitors. Juvenile cases ought not to be taken in the court, but in a private room.

The solicitors and others, except officials and Press representatives, then left the court.

The position is defined in s. 111 (4) of the Children Act 1908: "In a juvenile court no person other than the members and officers of the court and the parties to the case, their solicitors and counsel, and other persons directly concerned in the case, shall, except by leave of the court, be allowed to attend; Provided that *bonâ fide* representatives of a newspaper or news agency shall not be excluded."

A solicitor is an officer of the Supreme Court, it is true. The language of the section indicates, however, that what is contemplated there is the officers of the juvenile court. "*Their* solicitors and counsel," referring to the advocates of the parties, seems to limit the number of solicitors and counsel allowed to be present and to exclude the profession generally. Otherwise the phrase should have been "solicitors and counsel," without the qualifying word "their."

"GUILTY INADVERTENTLY."—A plea of "Guilty inadvertently" is reported to have been made at Oxford City Quarter Sessions by WILFRED BURCKHARDT HALES, accused of obtaining credit without disclosing that he was an undischarged bankrupt. This was apparently held to be a plea of "Guilty," and HALES was sentenced to nine months' imprisonment in the second division. Counsel for the prosecution said that HALES was adjudicated bankrupt in April of last year. He started as a University coach in Oxford in September, 1925. At that time he was an undischarged bankrupt, having been made a bankrupt in 1903. He had never applied for his discharge from that bankruptcy. Detective-sergeant BLANN said HALES had stated that he was a Cambridge Master of Arts and a Doctor of Science. Inquiries had shown that he possessed neither of these degrees. He was

an undergraduate at Cambridge in 1899. The Recorder said that HALES was an educated man, and therefore must have known the danger of the course he was pursuing.

This looks a little startling, but there is no reason to doubt the accuracy of the learned Recorder's ruling. It is rarely that a man can be inadvertently guilty of a criminal offence, but in this particular instance it would seem that *mens rea* is unnecessary (*R.* v. *Duke of Leinster*, 1924, 1 K.B. 311; 87 J.P. 191) and that intent to defraud is not in issue (*R.* v. *Dyson*, 1894, 2 Q.B. 176; 58 J.P. 528), though naturally it would have considerable bearing on the measure of guilt and the amount of punishment (*R.* v. *Duke of Leinster, supra*).

This is in fact one of those rather unusual instances in which a statute, by imposing an absolute obligation or prohibition, creates a serious criminal offence, irrespective of the state of mind of the offender. As breaches of regulations and bye-laws such offences are, of course, by no means uncommon.

Industrial Arbitration.

SIR WILLIAM MACKENZIE, K.C., late President of the Industrial Court, addressed a meeting of the members of the Institute of Arbitrators on the 12th inst., Mr. GILBEE SCOTT (the President) presiding.

Sir WILLIAM MACKENZIE said: It is too late in the day to argue the pros and cons of industrial arbitration. Industrial arbitration is an accepted solvent to any deadlock that may arise after conciliation or mediation proceedings have failed to bring about a settlement in an industrial difference. The success of industrial arbitration during the war, when we had a body of trained and experienced men sitting day by day hearing and deciding industrial disputes; the finding of the Whitley Committee in 1918 in favour of a permanent Court of Arbitration; the illuminating debate in the House of Commons on the Industrial Courts Bill in 1919, and the invaluable work of the Industrial Court during the last nine or ten years show that at last we are reaching the position when force shall give way to reason in the settlement of industrial disputes. It is not to be expected that the strike and lock-out will be at once abandoned, for we have been too long familiar with these weapons as a means in ending (although not in settling) industrial disputes; but gradually as industrial arbitration justifies itself resort to force will correspondingly diminish.

Prior to the war the cause of industrial arbitration was weakened by men having been chosen more or less casually to fill the office of arbitrator. There was no continuity of decision; decisions, wise in themselves, were more or less haphazard and conformed to no particular principles, and save in a few rare instances, seemed rather to meet the difficulties of the moment than to lay down any general rule suitable for the guidance of the relations between management and labour. The Industrial Court, while settling industrial differences, is gradually enunciating rules and principles which will guide these relations and tend to the avoidance of disputes which result in the stoppage of work. The Institute of Arbitrators may in this respect do useful work in training men for the duties of industrial arbitration.

It may be well, therefore, to note certain special features of industrial arbitration which distinguish it from commercial arbitration.

(1) Industrial arbitration is to a large extent concerned with the future rather than with the past; that is, the framing of a new obligation or undertaking rather than with the construction or enforcement of an old one. Commercial arbitration, on the other hand, is almost entirely concerned with the application of existing or concluded contracts and obligations.

While the problems that come before the industrial arbitrator sometimes consist of questions arising out of existing contracts or obligations, such as the price to be paid for work already done, the interpretation of an existing agreement or ascertaining the nature, extent and application of a local custom, a large percentage consists of questions dealing with future events, such as the rate of wages to be paid or price of work to be done in the future or the conditions under which work is to be done. This is in marked contrast to the questions involved in any commercial arbitration and render the problem submitted to the industrial arbitrator more difficult to determine.

(2) The two parties to an industrial arbitration consist, as a rule, of large numbers of persons on both sides, and certainly on the workmen's side. In some of the cases that have come before the Industrial Court the number included in the workmen's side has exceeded one million persons. On the other hand, cases are reported when only one or a small number of persons is involved. Sometimes the parties are directly represented before the arbitration tribunal, but as a rule the immediate parties act in a representative capacity, as, for example, the claim of a trade union against an employers' association or an employers' association against a trade union. The ultimate parties may be a very large and possibly ill-defined group of workpeople and employers.

(3) An industrial arbitration is not conducted according to the rules of procedure recognised by the courts as binding on a commercial arbitration. The rules regulating the procedure and taking and receiving of evidence in commercial arbitrations have been long formulated by the courts of law as necessary to the ascertainment of truth and the administration of justice; and unless these rules are thoroughly understood they seem sometimes arbitrary and rigid, and to the lay mind seem to hide rather than to discover the truth; and courts of law require strict observance of these rules. Rules of evidence in industrial arbitration have scarcely yet been formulated, but the practice observed in industrial arbitration essentially differs from the rules of the courts of law. The administration of an oath is exceptional; so likewise is the exclusion of what is sometimes termed hearsay evidence. It is often convenient to allow the witness to tell his own story in his own way despite apparent irrelevancies, and for the court to pick out what is relevant and material from the completed narrative. The legalist would feel that argument, evidence and irrelevant matter were thus hopelessly mixed and incapable of disentanglement, offending against all the rules of evidence. There is no power to compel the attendance of witnesses or to award costs.

(4) Awards in commercial arbitration are decided according to the settled canons of the common law and the provisions of statute law and, accordingly, the arbitrator is bound by precedent and judicial decision, and is liable to be corrected if he goes wrong in any particular by a court of law. There was a time in the history of the common law of England when there were no settled canons or rules, and the common law was largely built up of custom and precedent. What may be called industrial common law is at present in a state like to the early state of the common law. The formation of a corpus of industrial common law is at present an aspiration rather than an achievement. For over one hundred years there have been gropings after some guiding rules for the regulation of industrial relations of employers and employees, and later of employers, management and employees. Great industrial arbitrators like Mr. Joseph Chamberlain, Mr. Farrer Herschell, Q.C. (afterwards Lord Chancellor) and Mr. Mundella in the second half of the nineteenth century endeavoured, and the Industrial Court at the present time has set itself, to formulate rules which gradually will adjust the relations of all those engaged in industry. Slowly, but surely, these rules will emerge.

It is a cheap sneer that industrial arbitration generally results in "splitting" the difference. Splitting the difference is what Sir Josiah Stamp has properly and aptly described

as a form of mental laziness, and industrial arbitrators have by no means a monopoly of this disease. Commercial arbitrators, juries and even High Court judges have been known to suffer from it. To split the difference is not therefore a special feature of industrial arbitration. If the difference between the claimant and the respondent in an industrial arbitration is merely halved, not because of the reason of the thing, but because of mental laziness, the conduct of the arbitrator is reprehensible. But where a result has been reached after a careful review of the evidence and all the relevant facts, no captious exception can be taken to a decision which results in meeting each party half way, especially if the facts show that the case has been as much overstated by one party as it has been understated by the other. For any one to declare that generally industrial arbitration is to be avoided because industrial arbitrators habitually split the difference betrays a woeful ignorance of the march of events and the judicial position which the Industrial Court has assumed and maintained.

(5) An industrial award is, as a rule, of such a nature that its proper observance must depend upon the goodwill and sense of fair play of the parties. Not only is industrial arbitration voluntary in its inception and in its observance, but it has long been recognised that even though legislation were passed giving compulsory effect to awards, there is in the last resort no known means of compelling a body of workpeople to work under conditions which they dislike or compelling employers to run their business or any branch of it at a loss. In the ordinary commercial arbitration the award is enforceable both in law and in fact, that is, it enjoins something the specific performance of which is feasible, or else requires the payment of a sum of money for which the individual against whom the award has been issued is required to pay under the sanction of the law.

Commercial arbitrations are regulated by and awards are enforceable under the Arbitration Act. The Arbitration Act does not apply to industrial arbitrations, the observance of awards being left to the sense of civic duty of the parties. The number of awards that have been rejected since the war, for example, is trifling.

So much for the special features. The progress of industrial arbitration has been hampered in the past by the inexperience of men chosen sometimes as arbitrators. One prominent industrialist declared some thirty years ago that the risks of arbitration were too great; "It was not prudent," he said, "to delegate the destinies of a trade to the opinion of a single individual who could not know anything of the details and intricacies of the trade." Times have changed, and the objection no longer holds. Ten years ago the Industrial Court was established by statute consisting for the most part of men who had had a long training in industrial arbitration and were experienced in the customs and practices of the several trades and industries. Moreover, the Institute of Arbitrators since its formation makes a special object of training men for the office of arbitrator.

It follows that the industrial arbitrator should have a good knowledge of industry. This is not to say that he need have a close acquaintance with the technical minutiæ of the trade with which he is called upon to deal. The parties appearing before him will be ready enough to explain the mysteries of their calling and indeed will derive a subtle pleasure from doing so. But although he can profitably show an innocence of technicalities which carries in itself an assurance of detachment and impartiality, he must also make it clear that the industrial atmosphere is not foreign to him and that he is capable of moving among a maze of facts without losing a sense of proportion. The basic organisation of industry is, on the whole, pretty uniform, and it would cause disquiet among the parties if the arbitrator showed, by remark or question, an ignorance of it. To ask what a piece rate or a collective agreement is, or to show an ignorance of the general relationship subsisting between the various grades of workpeople and the management, would be disastrous.

It is necessary to success in industrial arbitration that the arbitrator should be immensely patient and self-effacing. The parties must be allowed to tell their own story in their own way. Some well-directed questions at the end of the evidence will give confidence that the points have been followed; but nothing will irritate and annoy more than frequent interruption of the parties' own statements. The interruptions may at their worst be the outcome of mere egotism interpolated with a view to showing how alert and acute the arbitrator is; they may be well intentioned and may aim at nothing more than the saving of time and the avoidance of undue elaboration; they may be the result of an ultra-conscientious desire to appreciate every point as it is made. In any event they are a mistake. The good arbitrator is the good listener.

It may be wondered why I dwell on these matters which, after all, do not affect the substance of the award. It is because, in industrial arbitration, we cannot neglect psychology. The personal acceptability of the arbitrator cannot make up for a decision which is obviously foolish and unjust. But there is a very large class of cases in which the award, however well considered, will leave one of the two parties disappointed. The question whether the award will be given a fair trial or not may well turn in these circumstances on the personal impression made by the arbitrator. I have alluded to the fact that the immediate parties are, as a rule, only representatives. When the award is given, it will need to be reported to those who will be affected by it—the general body of employers or of workpeople. A great deal may depend upon the fervour and sincerity with which the acceptance of an award is recommended by the leaders of these bodies, and it is of the utmost importance to the cause of industrial peace that those charged with this task should be fortified in their efforts by a feeling of confidence in the arbitrator, and a sense that, although the verdict has gone against them, they have had a fair and enlightened hearing. The rejection of an award is a disaster—fortunately not a frequent one—but the grudging and resentful acceptance of an award is only slightly less to be deplored.

Housing: Some Legal Difficulties.

By RANDOLPH A. GLEN, M.A., LL.B.

VII.

The Provision of New Houses.

I now come to my last group of housing provisions, namely: "The Provision of New Houses." Under s. 57 (1) of the Act of 1925, local authorities (both urban and rural) "may provide housing accommodation for the working classes (*a*) by the erection of dwelling-houses on any land acquired or appropriated by them; (*b*) by the conversion of any buildings into dwelling-houses for the working classes; (*c*) by acquiring houses suitable for the purpose; (*d*) by altering, enlarging, repairing, or improving any houses or buildings on land acquired as a site for the erection of dwelling-houses for the working classes, or any other houses an estate or interest wherein has been acquired by the local authority." They may also (s. 57 (2)), "alter enlarge repair or improve any house so erected converted or acquired, and may fit out furnish and supply any such house with all requisite furniture fittings and conveniences," and, under s. 57 (4), the "provision of housing accommodation includes the provision of lodging-houses, and separate houses or cottages containing one or several tenements, and, in the case of a cottage, a cottage with a garden of not more than one acre." The following cases have been decided with reference to these housing schemes.

The London County Council prepared a scheme, for the housing of about 120,000 persons, which involved the acquisition of about 3,000 acres. It was held, under the repealed provisions (s. 11 of the Act of 1903, and s. 12 of the Act of 1919, c. 35, now ss. 57 and 107 of the Act of 1925), that the council could, subject to the sanction of the Minister of Health, acquire compulsorily a beerhouse within the area with the objects (1) of controlling or regulating the traffic in intoxicating liquor on the site, such control to be based on management by some company or association whose servants were not to have a pecuniary interest in the sale of alcohol, and (2) of providing for the general entertainment and refreshment of the population: *Conron* v. *London County Council*, L.R. 1922, 2 Ch. 283; 66 SOL. J. 350.

Solicitors and others concerned in contracts under the Housing Acts should be careful to insist on the sealing of these contracts by the local authorities, for, in *Nixon* v. *Erith Urban District Council*, L.R. 1924, 1 K.B. 819, the Court of Appeal held that a contract with a quantity surveyor in connexion with a housing scheme must, as it exceeded £50 in value or amount, be sealed under s. 174 of the Public Health Act, 1875, as applied by s. 56 of the Act of 1890 (now s. 57 (3) of the Act of 1925). Though there was considerable prejudice against the appellant in this case, for the trial judge found that he had overcharged £750 in a bill for £1,100, the mere possession of merits will not get over this particular defence.

Contractors agreed with a local authority to erect 154 houses. A clause in the contract enabled the local authority to terminate the agreement on fourteen days' notice. On a date when it required more than fourteen days to complete seventy houses, the local authority gave notice determining the contract "at the completion of the first section of seventy houses." The Court of Appeal (SARGANT, L.J., dissenting) held (reversing BAILHACHE, J.), that the notice was valid: *Boot & Sons* v. *Uttoxeter U.D.C.*, 1924, 88 J.P. 118; 22 L.G.R. 303; 68 SOL. J. 684.

In a Scottish case (*Stein & Co.* v. *Stirling C.C. Eastern District Committee*, 1908, 91 J.P. 205), the House of Lords held that the increased rate of subsidy provided for by the Housing (Financial Provisions) Act, 1924, did not apply where the approval of the applicants' housing scheme took place in February, 1924, because the increased rate only applied when the approval took place after the passing of the Act of 1924, namely, the 7th August, 1924.

The general power to relax bye-laws which was conferred on local authorities by s. 25 of the Act of 1919 (c. 35) has now expired, and the special power conferred by s. 24 of that Act (now s. 99 of the Act of 1925) only relates to streets laid out and buildings erected under housing schemes. So that the decision in *Attorney-General* v. *Denby*, L.R. 1925, Ch. 596, that the local authority could waive a bye-law as to the open space in the rear of a new building, is no longer applicable. The Court of Appeal has accordingly now held that a local authority's agreement with a builder, who had contravened their drainage bye-laws, that if he would take certain specified steps they would apply for the subsidy in spite of the contravention, was unenforceable though the builder had taken the specified steps: *Bean & Sons* v. *Flaxton R.D.C.*, 1928, 92 J.P. 121; 26 L.G.R. 335.

Next week I propose to conclude this series with certain miscellaneous cases affecting the law of housing.

Mr. W. A. WILLIAMS, Solicitor-Assistant in the office of Mr. O. Treharne Morgan, Town Clerk of Newport, Mon., has been appointed Prosecuting Solicitor in the office of Sir William E. Hart, Town Clerk of Sheffield. Mr. Williams was admitted in 1920.

Mr. STEPHEN A. JEWERS, Solicitor-Assistant in the office of Mr. Norman L. Fleming, Town Clerk of Bradford, has been appointed Deputy Town Clerk of Middlesbrough. Mr. Jewers was admitted in 1923.

Hire-Purchase and Guarantors.

THE hire-purchase system has been productive of a number of law suits in respect of unpaid instalments, but the particular sets of facts in such cases do not differ greatly. In a recent case before Mr. Justice AVORY, however, *Midland Motor Showrooms* v. *Newman*, 73 Sol. J., 93, a somewhat complicated but interesting variation of the hire-purchase action arose upon facts which, although perhaps unusual, are not by any means impossible of recurrence, and the decision in the case might be usefully borne in mind by all who sell their wares on this system. The Regent Construction and Finance Company, Limited, entered into a hire-purchase agreement with one TOYE, under which he obtained from them a Renault motor-car, and for which he agreed to pay by stipulated monthly instalments. A written guarantee to meet the payments in the event of TOYE defaulting was given by a Mrs. NEWMAN. TOYE did in fact fall into arrears with his instalments, and during the course of correspondence with the Regent Construction and Finance Company, he wrote them on the 3rd February, 1927, as follows: "Now, however, I have met an old friend who on hearing of my circumstances offers to help me and is willing to send you a cheque for £20. You know my circumstances too well, and it is useless my adding that with ordinary luck I shall be on my feet again very soon, so if you will kindly accept this on account I faithfully promise to find the balance of arrears within a month . . ." In reply the company said: ". . . We are prepared to accept £20 on account, the arrears to be paid within one month of to-day's date. Kindly have cheque forwarded by return of post . . ." No arrears were in fact paid after the cheque was sent and the motor-car was taken back by the company and certain necessary repairs done to it costing £43—the arrears of hire rent then amounted to £79 13s. 4d. By a deed of assignment, dated the 18th September, 1928, the Regent Construction and Finance Company, Limited, assigned all their rights in respect of this hire-purchase agreement to the present plaintiffs, the Midland Motor Showrooms, who now sued the guarantor, Mrs. NEWMAN, for the above two sums, totalling £122 13s. 4d. Her defence was that the two letters, *supra*, formed a binding contract under which the Regent Construction and Finance Company, Limited, agreed to extend TOYE's time for payment, the consideration for the agreement being the £20 paid by cheque by TOYE's friend. That contract, she alleged, was inconsistent with the terms of her guarantee from which she claimed to be discharged. Mr. Justice AVORY, in his judgment, said that in the circumstances when the Regent Construction and Finance Company agreed to accept the cheque for £20 from the friend, they were, according to the authorities, accepting a valuable and negotiable security in exchange, and in payment of a larger sum of money that was then due; that was clearly a good consideration and there was a binding contract to extend the time. The question then arose whether the defendant was discharged only from the payment of the amounts which were then due or whether it operated to discharge her altogether from her obligations under the guarantee. His lordship referred to a passage of Chief Baron KELLY in the case of *The Croydon Commercial Gas Company* v. *Dickinson*, 25 SOL. J., 157; 2 Common Pleas Div., 46, where he said: "It has been contended by Mr. SMITH that there was but one contract and that therefore if time was given in respect of one performance under it that operated as a discharge of the whole contract. But although in one sense it was one contract, yet, in effect, it was as much three separate contracts as if it had been created by three separate instruments." He, Mr. Justice AVORY, was of opinion that that meant that if there was one contract, and time was given in respect of the performance under it, that performance was a discharge of the whole contract. There was one contract in the present case, not a series of contracts month by month which could be separated for

the purpose of payment, and the guarantor was entitled to judgment, her guarantee being discharged *in toto*. The short point is that hire-purchase dealers must beware of giving a customer an extended time for payment of arrears on the strength of a friend of the customer promising them a cheque on account towards partial settlement—acceptance of that cheque will deprive them of any rights that they may have against a guarantor.

A Conveyancer's Diary.

Meaning of Binding Trust for Sale—*continued.*

The facts in *Re Parker's Settled Estates*, 1928, Ch. 247, were in some respects similar to those in *Re Leigh's Settled Estates*, 1927, 1 Ch. 852.

In both cases land formerly settled had been disentailed and re-settled upon trust for sale, but in *Re Parker* the land, as well as being subject to a jointure rent-charge payable to the wife of the tenant for life, if she survived him, was also subject to an outstanding legal term of years to secure portions, which were not yet raisable.

An attempt had been made, before 1926, to get in this outstanding legal estate and to free the land from the jointure, but this attempt failed as the jointress was restrained from anticipation and the portions trustees had no power to surrender their term.

In these circumstances Romer, J., held that the conveyance on trust for sale operated on the respective interests of the tenant for life and tenant in tail only, and accordingly that the land was the subject of a compound settlement: *Re Mundy and Roper's Contract*, 1899, 1 Ch. 275.

Under this settlement the plaintiff, who had formerly been the tenant for life, had the powers of a tenant for life (S.L.A., 1882, s. 58 (1) (ix)), but inasmuch as the life interest and the entailed interest in remainder were subject to an immediate trust for sale, the plaintiff could only exercise these powers if those interests were deemed to exist by virtue of s. 63 of the Act of 1882.

These were the circumstances existing immediately before 1926, and it then became necessary to consider in whom the legal estate had become vested, on the 1st January, 1926, by virtue of Pt. II of the 1st Sched. to the L.P.A., 1925.

For this purpose it was necessary to ascertain whether the land was settled land or subject to an immediate binding trust for sale.

This brought into discussion the decision in *Re Leigh's Settled Estates* No. 1, in which case the legal estate which had formerly been the subject of the settlement was subject to an equitable rent-charge.

Romer, J., disagreed with the *dictum* of Tomlin, J., that an immediate binding trust for sale must be an overreaching trust for sale, and after a long review of all the material sections relating to trusts for sale gave it as his conclusion that *the words trust for sale, when used in reference to land that is subject to a prior equitable interest, are not confined to cases where the equitable interest can be overreached by the trustees.*

In *Re Parker*, however, the trust for sale did not affect the whole legal estate comprised in the settlement, for there was still a legal term of years outstanding in the portions trustees.

Upon these facts the judge distinguished the case before him from *Re Leigh*, with which decision he found himself in disagreement, but held that there was no immediate binding trust for sale because of the legal term outstanding in the portions trustees. It appeared from this decision that a trust for sale cannot be considered an immediate binding trust for sale if any part of the legal estate is outstanding, but may be considered an immediate binding trust for sale if there are equitable interests subsisting under the settlement which the trust for sale cannot overreach.

We think that the above opinion was one which received the support of many practitioners. The existence of a legal term of years in the portions trustees could make no practical difference to the tenant for life's power of sale, for upon the execution of the vesting deed the legal term would become equitable by virtue of the S.L.A., 1925, 2nd Sched., para. 1 (6).

The decision in *Re Norton*, 1929, 1 Ch. 84, seems for all practical purposes to have reinstated the *dictum* of Tomlin, J., in *Re Leigh*.

In December, 1925, land stood limited to the use of Lord Norton for his life, and after his death, subject to certain equitable charges, one of which was secured by a legal term of years, to the use of trustees upon trust for sale. After 1925 a vesting deed was executed, after which the legal term of years became equitable.

Lord Norton died in December, 1926, and the land vested in his special personal representatives. The question was, who was entitled to the legal estate?

In deciding whether under S.L.A., 1925, s. 7 (5), the trustees had or had not the right to call for a conveyance upon trust for sale, the judge used the following words:—

"There are certain equitable rent-charges which take effect in priority to the trust for sale.

"That being so, it appears to me that not only was the whole legal estate the subject-matter of the settlement not held upon trust for sale upon the death of the second Lord Norton, but that the trustees for sale, as such, had not and have not now the right to call for the legal estate."

If this decision has not reinstated the principle of *Re Leigh*, we must assume that though, in theory, there may be an immediate binding trust for sale which is not capable of overriding all equitable interests, having priority under the original settlement, in practice it is most doubtful whether such a trust exists. Accordingly, until there is some authority as to the circumstances in which the principle stated in *Re Leigh* does not in practice apply, we must act on the assumption that it applies in all cases where equitable interests cannot be overreached.

Re Leigh No. 2, however, mitigates in some degree the full results of this principle, for it seems that where trustees have indirectly been approved by the court before 1926 they are capable of overriding the equitable interests under L.P.A., 1925, s. 2 (2), as amended, and so of keeping the trusts outside the S.L.A., 1925, by virtue of s. 1 (vii) of that Act.

Landlord and Tenant Notebook.

Law of Property Amendment Bill.

Now that the Law of Property Amendment Bill has been passed without amendment by the House of Lords, it may be convenient to note here the effect of its provisions.

The Bill is intended to remedy a mistake in the Law of Property Act, 1925. It is a short Bill consisting of only two sections. The material section, s. 1, providing that "nothing in sub-s. (8), sub-s. (9) or sub-s. (10) of s. 146 of the Law of Property Act, 1925 (which relates to restrictions on and relief against forfeiture of leases and underleases) shall affect the provisions of sub-s. (4) of the said section."

In order to understand this Bill it is necessary to refer briefly to the previous law with regard to relief against forfeiture in the case of underlessees.

Under s. 4 of the L.P.A., 1892, relief against forfeiture was extended to underlessees in cases where the interest of the immediate lessor was liable to forfeiture. Thus that section provided that "where a lessor was proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant proviso or stipulation in a lease, the court may on application by a person claiming as underlessee any estate or interest in the property comprised in the lease or any part

thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose make an order vesting for the whole term of the lease or any lesser term the property comprised in the lease or any part thereof in any person entitled as underlessee to any estate or interest in such property upon such conditions as to execution of any deed or document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances in each case shall think fit, but in no case shall any underlessee be entitled to require any lease to be granted to him for any longer term than he had under the original sub-lease."

It will be observed that the language of s. 4 is very wide, so that as the law stood previously to the L.P.A., 1925, an underlessee might have claimed the benefit of s. 4, even in cases in which no relief against forfeiture could have been granted to the immediate lessor.

If one turns to the L.P.A., 1925, it will be noted that s. 4 of the Conveyancing Act, 1892, is reproduced as a sub-section (i.e., sub-s. 4) of s. 146. But by sub-ss. (8), (9) and (10) of s. 146 that section is not to extend to the cases referred to in those three sub-sections.

Thus, for instance, take sub-s. (9). By virtue of that sub-section, s. 146 is not to apply to conditions of forfeiture on the ground of bankruptcy where the lease is of agricultural or pastoral lands, of mines or minerals, etc. In all these cases, therefore, if the immediate lessor went bankrupt the underlessee would under the L.P.A., 1925, be deprived of his interest in the property, since the benefit of sub-s. (4), which is a part of s. 146, would equally be excluded.

The Law of Property Amendment Bill will now restore the law to its previous state prior to the L.P.A., 1925, and in all such cases therefore an underlessee may be granted relief in a proper case.

It is to be noted, however, that the Bill is not retrospective.

Our County Court Letter.

THE RESPONSIBILITIES OF GARAGE PROPRIETORS.

(*Continued from* 72 Sol. J., *p.* 839.)

III.

The liability of owners of a vehicle let on hire with a driver, in the event of the latter's negligence while on the business of the hirer, was considered in *G. W. Leggott and Son, Limited*, v. *C. H. Normanton and Son, Limited*, 45 T.L.R. 155. The defendants were accustomed to hire motor-wagons, with drivers, from the plaintiffs for the day, and on one occasion the defendants instructed the driver to take a cement mixer to a destination, the road to which led through a tunnel under an aqueduct. Without measuring the clearance, the driver drove straight into the tunnel, with the result that the cement mixer became jammed, and the plaintiffs added an item of £4 10s. 4d. to their bill for the extra time their vehicle was detained. The defendants disputed liability for the above item, and counter-claimed £37 10s. for the damage caused to their cement mixer. His Honour Judge Leigh held, at Manchester County Court, that the accident was due to the negligence of the driver, who (at the time and for the particular purpose on which he was engaged) was the servant of the defendants. Judgment was therefore given for the plaintiffs on the claim and counter-claim, and the decision was upheld by the Divisional Court. Mr. Justice Swift observed that, when the motor vehicle arrived at the defendants' premises, the driver received a paper headed "Transport Instructions," and that throughout the day he remained under the orders of the defendants' representatives. It might be that for some occurrence during the day the driver might still act in such a way as to cause liability to fall upon his general employers, the plaintiffs, but in the above circumstances the learned County Court judge had rightly held that negligent conduct, in carrying out orders of the defendants' representatives, ought to be treated in law as the negligence of the defendants themselves. Mr. Justice Acton applied the following test: Did the plaintiffs retain the power of control over the driver? There being ample evidence to the contrary, no ground existed for interference with the judgment, and the appeal was dismissed.

This decision was based upon *Bull and Co.* v. *West African Shipping Agency and Lighterage Company*, 1927, A.C. 686, in which the plaintiffs obtained judgment for £2,376 5s. 2d., the value of a lighter which they had let on hire, with two bargees, to the defendants. The defendants used the lighter to load groundnuts on to their steamship "Rijnland," but during a night when the bargees had decamped the lighter broke away from alongside the steamer by reason of the current, and was wrecked some miles away. It was the bargees' duty to have taken orders from the "Rijnland," whose crew would have thrown a heaving line whereby the lighter might have been saved—if the bargees had been on board. The Privy Council held that, in these circumstances, the lighter had to be watched over by the bailees during the entire period of hiring, and it was the bailees' duty to keep an eye upon the bargees, or to furnish others so that the chattel might not be lost. It was unreasonable to suggest that the bargees passed into the control of the defendants only during the loading, but out of that control and back into the service of the plaintiffs when work had ceased for the night.

The converse of the above situation had already been considered in *Société Maritime Française* v. *Shanghai Dock and Engineering Company*, 37 T.L.R. 379, in which the plaintiffs had borrowed some of the defendants' workmen to assist in repairing the engines in the plaintiffs' wooden motor ship. The ship's engineer directed operations, which included the use of lighted candles, and it was alleged that by the negligence of the borrowed workmen a fire broke out in the ship, in respect of which the plaintiffs brought an action against the defendants. The Privy Council held that the defendants were not liable, as the workmen were not under their control, and it was immaterial whether they were paid for their men's services or not.

It is to be observed that (1) in the last-named case the hired servants did damage to the bailees, but the bailors were not liable because they had parted with control; (2) in the second case, *supra*, the hired servants did damage to the bailors, but the bailees were liable because they had assumed control; (3) in the first case, *supra*, the hired servant did damage both to the bailors and the bailees, but as the latter had assumed control they were required to bear their own loss and to make good that of the bailors; (4) all the above cases are a modern application of the principle laid down in *Donovan* v. *Laing, Wharton and Down Construction Syndicate*, 1893, 1 Q.B. 629.

Correspondence.

The New Lord of Appeal.

Sir,—Referring to your first paragraph under "Current Topics" of to-day's date, is there not another precedent for jumping the High Court and Court of Appeal? Sir Edward M. Carson, K.C., as he was before his appointment as a Lord of Appeal, went straight from the Bar to the House of Lords. I believe I have read that he has not always been pleased with his move.

I believe, too, that in 1913, the late Lord Parker of Waddington, on appointment as a Lord of Appeal, was a judge of the Chancery Division.

Chas. Proctor.

Chesterfield.
9th February.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Yorkshire Registries—Mortgage—Debt Repaid Prior to 1926 But no Reconveyance—Position.

Q. 1563. A.B. executed a mortgage to C.D. on property in the West Riding, which was registered in the Wakefield Registry in 1897. A.B. died in 1918, and her two daughters proved her will. Between the date of A.B.'s death and the year 1921 the daughters paid off the mortgage by instalments but no reconveyance was taken. C.D. died in 1927, but his will has not been proved yet, and the solicitors acting for his executors absolutely ignore every application for information. A.B. has agreed to sell the property, but presumably cannot make a title until the will of C.D. has been registered, and a reconveyance by his executors executed. If the property were not in the district of a deeds registry the mortgage having become a satisfied term could be disregarded. Presumably a reconveyance cannot be dispensed with since the register must be cleared. How can we proceed?

A. Though desirable it does not seem necessary to clear the register. On a future sale a purchaser making search would find the subsisting entry, but on being satisfied that repayment took place prior to 1926 would presumably not object to complete. The best obtainable evidence of repayment should be procured. The writer is not sufficiently acquainted with procedure in the Yorkshire Registries to form any opinion as to whether the registrar can under the circumstances clear the register on the production of satisfactory evidence of repayment. If the mortgage was of freeholds and in fee simple it is not a question of a satisfied term, but of the vesting under L.P.A., 1925, of an outstanding legal estate.

Will—Annuities—Settlement.

Q. 1564. A testator who died in 1912, by his will devised his real estate unto his trustees, upon trust to collect the rents thereof, and after paying mortgage interest and cost of keeping in good repair, etc., to pay certain annuities as therein mentioned, and on the death of each annuitant the annuity to which he was entitled was to be paid to the remaining annuitants in the same proportions as their annuities bore to each other until such time as there was only one such annuitant, then the trustees should hold the premises subject to an annuity to testator's wife, upon trust for such surviving annuitant absolutely; and testator authorised his trustees to pay to any of the annuitants the full capital value of their annuities and in order to provide such sum he authorised his trustees to raise the same by sale or mortgage of his real estate and to do and execute all acts and assurances requisite therefor, and he appointed his trustees trustees of his will for all the purposes of the Settled Land Acts, 1882 to 1890. All the annuitants are alive. The trustees have now agreed to sell certain portions of the testator's real estate, and the question has arisen as to whether the will created a settlement under the S.L.A., 1925. The only section bearing on the matter seems to be s. 1 (1) (5) of the above Act, but it is thought that the property is not *charged* with the payment of any of the annuities as required by this section and that the remaining definitions contained in s. 1 (1) do not apply to the property at all. If the property is not settled land it is assumed that title must be made under a trust for sale, but it is doubtful if the will gives the trustees such a trust, but it is thought that s. 16 of the T.A., 1925, would be sufficient to enable a good title to be made in this way. If the property is settled land, it is assumed, there being no person having the power of a tenant for life, that a vesting deed must be executed by the trustees vesting the property in themselves as statutory owners.

A. This is a difficult case upon which to advise without seeing the text of the will; further, we are not told who is entitled to the surplus income, if any.

The statement, sometimes made, that where there is a general and indefinite trust to receive rents and profits for the payment of an annuity it amounts to an indefinite charge of the annuity on the corpus is too general to be of practical value. The words of each will must be followed: "White and Tudor's Leading Cases in Equity," 8th ed., vol. I, p. 851. Where an annuity is given out of the rents or profits and the capital given over "after payment of" or "subject to the payment of," the annuity, the corpus will be liable: *ibid.*, p. 850, and cases there cited.

Upon application of the foregoing principles, and taking into consideration the fact that the trustees were authorised to pay out the capital values, we form the opinion that the property is charged and that s. 1 (1) (v) of S.L.A., 1925, applies and a settlement exists. If, as appears to be the case, there is no tenant for life, a principal vesting deed must be executed by the S.L.A. trustees in their own favour before they can exercise the statutory powers: S.L.A., 1925, s. 23 and s. 13—note the definition of "statutory owner" in s. 117 (xxvi) of S.L.A., 1925.

Weekly Tenancy—Whether Term Definite or Indefinite—Stamp Duty.

Q. 1565. A company is the owner of an estate of considerable size consisting of working-class properties. All the tenancies are weekly and the rents are between £25 and £40 per annum. The present form of tenancy agreement in use provides that the tenancy shall commence on a certain day and continue thereafter from week to week terminable by one week's notice. The Inland Revenue claim that such a tenancy is for an indefinite term and that the agreements are therefore chargeable with *ad valorem* stamp duty—in each case 10s. Changes of tenancy and new agreements are very frequent and the payments so far made in stamp duties have amounted to a very considerable sum. Footnote (k) to precedent 59 (vol. 8, p. 229) of the "Encyclopædia of Forms and Precedents" states that where the rent is under £40 per annum fixed duty of 1d. only is chargeable. Is there any authority for this? If it is correct that a weekly tenancy is one for an indefinite term and not therefore chargeable with the fixed duty of 1d. as for a definite term not exceeding a year, is there any alternative to paying the *ad valorem* duty? Would it be a satisfactory solution to grant a tenancy for one week certain and then allow the tenant to hold over? In such case would it be clear that the tenant would be holding on a weekly tenancy on the terms of the expired agreement?

A. We express the opinion that the Inland Revenue are correct in claiming that the tenancies are indefinite, seeing that their duration is uncertain.

A lease or tack for any definite time not exceeding a year of any dwelling-house at a rent not exceeding the rate of £40 per annum is liable to a stamp duty of 1d. only. It should be noted that the time must be *definite* to bring the matter within this concession: see Stamp Act, 1891, as altered by s. 35 of the Finance Act, 1924.

Where a tenant holds over after the expiration of a term with the consent of the landlord, a tenancy from year to year, in the absence of evidence of contrary intention, arises, and

subject to the stipulations of the original contract of tenancy so far as applicable to the new relationship. This appears possibly to be the case both when the rent is calculated by reference to a year and to any aliquot part thereof.

We suggest that a satisfactory solution would be arrived at if a tenancy for one week certain was created, the tenant being allowed to hold over on the expiration thereof, provided that the tenancy agreement contained an express provision that in the event of the tenant holding over with the consent of the landlords no greater or less tenancy shall be deemed to arise than a weekly tenancy.

Leaseholds—Residuary Beneficiary and Executrix—Assent.

Q. 1566. A made her will on 17th October, 1923, and after giving her husband a life interest in a leasehold house she declared that after his death the same should fall into her residuary estate. She gave the residue of her estate, which consisted of cash, two freehold houses and four leasehold houses (including the one given to her husband) to her niece X absolutely, and appointed X sole executrix of her will. X has proved the will. Will X have to execute a deed of assent vesting the houses in her personally, or will the houses vest in her by reason of the will? If a deed of assent must be executed, which form should it take?

A. We are not told when A died or the date of the death of her husband. Assuming that A died before 1926 and that her husband survived her, the house in which he was to take a life interest vested in him under L.P.A., 1925, Sched. I, Pt. II, paras. 3 and 6 (*c*), provided there had been an assent in writing or by conduct before 1926. If there had been no such assent the legal estate in this house remained in X. As to the other houses the legal estate is in X either as personal representative, or if she had assented by conduct before 1926, beneficially. If the husband had the legal estate in the one house on his death X must obtain it from his personal representatives by way of assent or conveyance. If A died after 1925 X must assent to the vesting of the one house in the husband as life tenant and to the vesting of the other houses in herself as legatee. For appropriate forms see L.P.A., 1925, Sched. V, Form 8, and S.L.A., 1925, Sched. I, Form 5. On the death of the husband X must procure the legal estate from his personal representatives by way of assent or conveyance.

Form of Conveyance pursuant to Deed of Family Arrangement.

Q. 1567. A died in the year 1928 intestate, leaving a wife B, and two daughters C and D. Letters of administration have been granted to B and C. The estate of A consists of certain personal estate and two cottages forming the real estate. The whole estate is valued at £1,200. Instead of B taking the first £1,000 it is proposed to enter into a deed of family arrangement whereby the widow shall take the personalty absolutely and reside in the cottage occupied by the deceased, and subject thereto that this cottage shall belong to C absolutely, and that the other cottage shall be conveyed to D. It is desired to convey the two cottages pursuant to the deed of family arrangement to C and D. Can precedents be given for such conveyances?

A. We do not think that these conveyances need present much difficulty except in the case of the conveyance to C. In this case it appears desirable to avoid the complication of a settlement and to make use of a trust for sale. If the trust for sale is framed so that the sale is to be made at the request of the widow while resident in the cottage it is none the less imperative (*Re Ffennell*, 1918, 1 Ch. 91), and immediate and binding (L.P.A., 1925, s. 205 xxix), and there seems no objection to a provision that the subject of the trust for sale may be used as a residence (see "Davidson's Concise Precedents," 21st ed., p. 526). With these considerations in mind we have, though we do not know the exact contents of the deed of family arrangement, prepared the outline of the necessary document which outline is subjoined. In the case of the conveyance to D the widow need not be a party, and after similar recitals the deed will consist of a simple conveyance by B and C to D in fee simple. Alternatively B and C might simply assent to D, suitable recitals being introduced into the assent.

Parties: (1) B and C (administrators of A); (2) The widow; (3) C and another (X).

Recitals: (1) Death of A intestate beneficially entitled in unincumbered fee simple; (2) Grant of administration; (3) Marriage and children of A; (4) The debts and duties paid; (5) The deed of arrangement; (6) That to give effect thereto C has requested B and C, and B and C with the widow's consent have agreed to convey in manner thereinafter expressed; (7) B and C have made no previous assent, etc.

Operative part: (1) B and C at the request of C and with privity and consent of the widow, convey to C and X in fee simple as joint tenants upon trust, with consent of widow while resident, and thereafter at discretion for sale with power to postpone, the trusts of the proceeds of sale and of the acts and profits pending sale after the widow has ceased to reside being for C absolutely; (2) Declaration that the widow may occupy rent free for life if she so desires, but paying all outgoings including repairs and insurance; (3) Definition of occupation—power to let furnished for short periods; (4) Acknowledgment as to the deed of family arrangement.

S.L.A., 1925, ss. 30 (3) and 6 (b)—Assent or Conveyance—Sole Executor.

Q. 1568. By her will testatrix A devised all her real estate to her husband B during his life and after his death to her children C and D in equal shares, and appointed B her sole executor. A died in 1927, and B has now carried out his executorial duties. B now desires to mortgage his life interest and C desires to mortgage her share of the reversion to the same mortgagee. D is now an infant. It is desired to know whether B can convey the legal estate to himself as tenant for life in accordance with s. 6, sub-s. (*b*) of the S.L.A., 1925, or whether B should not appoint an additional trustee in view of s. 30, sub-s. (3) of the same Act.

A. We express the opinion that B can convey the legal estate to himself as tenant for life under s. 6 (*b*) of S.L.A., 1925, for in doing so he is acting as a personal representative and not as a trustee for the purposes of the S.L.A. The appointment of an additional trustee is not obligatory until it is necessary for B to function as a S.L.A. trustee.

Right of Purchaser from First Mortgagee to Delivery of Counterpart Leases in Possession of Mortgagor.

Q. 1569. Our client, A, purchased some house property from B, who sold as first mortgagee under his statutory power of sale. Two of the houses are at present let on leases for three years to the tenants. What right has A to possession of the counterpart leases, and what steps should he take to enforce this right? The mortgagor refuses to hand them over.

A. This appears to be a very difficult question, and we have not been able to find any direct authority on the subject. The delivery by the mortgagor to the mortgagee of a counterpart of any lease which he grants under his statutory power is a statutory condition of the grant of the lease, but the lessee is not concerned to see that the condition is complied with (L.P.A., 1925, s. 99 (11)). As a purchaser from the mortgagee exercising his statutory powers of sale is not exactly an assign of the mortgagee in the same sense that a transferee is, we express the opinion, though with much diffidence, that A has no right to the possession of the counterparts.

Conveyances, Leases and Powers of Attorney by Joint Tenants.

Q. 1570. I send you herewith copy correspondence which has taken place between my firm and some other solicitors, which itself explains the difficulties which I have come across

with regard to the above. The difficulties are further indicated in the questions set out below. I should be glad to have your views as to whether—

(1) Joint tenants being beneficially entitled as joint tenants and so holding upon trust for sale, are in a different position from other trustees ?

(2) Can one joint tenant appoint an attorney (*a*) to carry out jointly with the other joint tenant the trust for sale vested in him, (*b*) to execute any conveyance assignment or lease on his behalf, (*c*) to receive and give receipts for purchase money or fines on the grant of leases ?

(3) In the event of the answer to 2 (*b*) and 2 (*c*) being in the affirmative, the conditions imposed by s. 23 (3) of the T.A., 1925, are satisfied by the attorney appointing a solicitor to receive and give a discharge for money by permitting the solicitor to have the custody of and to produce a deed such as is mentioned in that section, or must such appointment be by the joint tenant who is unable through illness to attend to his own affairs himself, and if so, can the appointment be a general one, or must it be limited to each particular transaction ?

(4) In the event of the answer to 2 (*a*) and (*b*) or 2 (*c*) being in the affirmative, is it necessary that the conveyance or lease should contain a statement that the joint tenants are beneficially entitled ?

(5) In the event of the answer to (4) being in the affirmative, is it sufficient in the case of a conveyance by the joint tenants to state that they convey in pursuance of the trusts for sale as beneficial owners, or whether it is necessary that there should be a recital that they are in fact beneficially entitled, or alternatively that the words "and being" should be inserted between the words "as" and "beneficial owners" so that the phrase runs "as and being beneficial owners" ?

(6) Is it necessary in the case of a lease by joint tenants for statements to be contained in the lease or to be endorsed on it that the best rent that can reasonably be obtained is being reserved ?

A. (1) We express the opinion that joint tenants in so far as they are trustees holding upon the statutory trusts are in no different position from ordinary trustees.

(2) In view of the opinion expressed in (1) above, joint tenants in their capacity as trustees would appear to have no greater power of delegation than ordinary trustees, that is to say, they merely have power to delegate where there is a moral necessity for it, a legal necessity for it, an express statutory authority, or for the performance of a mere ministerial act involving no discretion. Applying this principle the answers to the second question are (*a*) No, unless the case fell within T.A., 1925, s. 25; (*b*) Only where the deed was already prepared and the execution was purely ministerial; (*c*) Only if there was some moral or legal necessity for the delegation.

(3) As no double delegation is permissible we express the opinion that the joint tenant must personally appoint the solicitor, and that it would be dangerous to make the appointment general.

(4) Our replies to question (2) are not wholly in the affirmative, but in so far as they are affirmative, the reply to this question is in the negative.

(5) *Cadit quæstio.*

(6) We do not think so. They, of course, lease under the S.L.A. power in a sense but as they are beneficially entitled they can vary or extend that power indefinitely.

The whole position is very much complicated by the fact that the joint tenants are beneficially entitled to the proceeds of sale, and we are disposed to think that a joint tenant could, with the concurrence of his co-owner, properly give a power of attorney for the exercise of any of his functions as a trustee, but this would necessitate bringing the beneficial ownership on to the title. In our opinion the words "beneficial owner," which are words of art used for importing certain covenants, are not in their ordinary context much (if any) indication of genuine absolute beneficial ownership and require amplification.

Positive Covenant—Breach—Liability as between Vendor and Purchaser after Contract and before Completion.

Q. 1571. A purchased a plot of building land, and in his conveyance was a covenant: "For the benefit of the owners and occupiers and tenants for the time being of the remainder of the —— Estate or any part thereof and so as to bind the property hereby conveyed the purchaser hereby covenants with the vendor that he the purchaser and the persons deriving title under him will observe and perform the conditions and stipulations mentioned in the schedule hereto so far as they are applicable to the land hereby conveyed but so nevertheless that the purchaser or other the owner or owners of the premises hereby conveyed shall as regards any of the aforesaid covenants (which are restrictive of the use of the land) be liable only in respect of breaches which occur while he or they shall respectively be owner or owners of the land or any part thereof in respect of which any breach occurs.

"The Schedule (inter alia).

"(1) The purchaser shall forthwith make and for ever maintain proper boundary walls or substantial cattle-proof fences on the land hereby conveyed on the sides indicated on the said plan of such height . . . as shall be prescribed by the vendor . . ."

B subsequently purchased this plot of land from A and upon inspection found the cattle-proof fencing has not been erected. In the contract for sale B agrees to enter into a covenant in his conveyance to observe and perform all covenants affecting the property and to indemnify the vendor in respect thereof. The purchaser maintains that the vendor has been guilty of a breach of covenant in not erecting the said fence and now calls upon the vendor to erect the fence before completion. What is the position ?

A. Reference should be made to "Everyday Points in Practice," Pt. XII, s. 5, Case 2, p. 451, where the whole point is fully discussed. On the assumption that B bought with notice of the covenant and with notice, real or notional, of the absence of the fence, it would appear that B is bound by his contract and cannot sustain his objection.

Appointment of New Trustee of Mortgagee, Mortgagor being Statute Barred—Sale.

Q. 1572. A testator died in 1913, and was at the time of his death in possession of two properties (one freehold and one leasehold) as mortgagee. Since then his trustees have remained in possession of the properties up to the present time without giving any acknowledgment to the mortgagors. A new trustee is about to be appointed, and we propose to include these properties among the other properties belonging to the estate which are to be vested in the continuing and new trustees. Is this sufficient, or are transfers of the mortgages necessary ? In the event of the sale of the properties we assume that the trustees should sell as trustees for sale and not as mortgagees in possession.

A. Assuming the mortgagees' possession was a real one and not merely receipt of income from a receiver, the mortgagor is statute barred. The appointment suggested is sufficient, but there is this difficulty, that it is usual on a conveyance by a mortgagee, where the statute has operated, that the vendor should convey as beneficial owner and "also in exercise of any power or authority hereunto enabling" or words to this effect. This is for the benefit of the purchaser, who is then not concerned whether the statute has operated. Under the circumstances, in order to obviate the necessity of proof, it is considered better that there should be a conveyance of all the property to the new trustees, but it is only a matter of special condition on sale if this course is not adopted. In any case the trustees would convey as trustees.

Practice Notes.

CAUSE OF CRANE COLLAPSE.

In the recent case of *Inspector of Factories* v. *The Co-operative Wholesale Society*, at Manchester, the defendants were summoned for breaches of the building regulations by (*a*) overloading a crane, (*b*) not exhibiting a notice on the crane showing its safe working load, (*c*) failing to keep a register of the examinations of the crane. The case for the prosecution was that the crane was only intended for a load of 1½ tons as a safe working load, and that when a heavier weight was lifted the crane had collapsed through a fracture at the foot of the king-post or mast, the result being that three men had been killed and one seriously injured. The defence was that the collapse was due to an inherent defect in the structure of the crane for which the defendants were not responsible, viz., the lifting of a pin at the top of the structure. Had the pin been sound, and well in its socket, the pulling-back force which caused the accident would not have been reached with a less load than 5½ tons, whereas the load at the time of the accident was only 2½ tons. This would have been a safe load except for the fact that the metal in the pin had stretched. The learned stipendiary magistrate held that there could not be any other explanation for the mishap than that advanced by the defendants, and he accordingly dismissed the first summons. There were pleas of guilty to the second and third summonses, and fines of 40s. were inflicted in each case.

A TENANT RIGHT ANOMALY.

A hard case under the Agricultural Holdings Act, 1923, was recently revealed at Gainsborough County Court in *Edwardson* v. *Townend and Another*. The plaintiff claimed £351 as tenant right compensation from the defendants, who were the executors of the late landlord, and had been administering his estate. The difficulty was that s. 41 of the above Act only provided a method of recovering the amount from a "landlord," but the Act provided no definition of that word which would include his executors. Section 57 (1) certainly laid down that "tenant" should include his executors, but there was no corresponding provision with regard to the word "landlord." It was also pointed out for the defendants that s. 41 was framed to protect an executor or any other landlord entitled to recover the rents of a holding otherwise than for his own benefit. His Honour Judge Chapman stated that s. 41 was so clear that he could not go wrong in holding that it had no application to the above circumstances. He had no alternative therefore but to follow the statute, however hard it might be on the plaintiff, as it was a matter for Parliament and not for the courts to amend the law. Judgment was therefore given for the defendants.

CENTRALISED TAX COLLECTION.

The scheme for centralising the collection of income-tax in certain districts, says *The Daily Telegraph*, is now so far complete that the names of the collectors appointed have been announced by Somerset House. The scheme, first tried at Southampton, has now been extended to eight other important areas.

The collectors and the districts to which they are appointed are: Mr. P. G. Davies to Bristol, Mr. J. E. Oates to Halifax, Mr. J. Tarbuck to Liverpool, Mr. N. Miles to Manchester North, Mr. W. T. Howell to Manchester South, Mr. T. L. Greenhalgh to Manchester West, Mr. T. O. Freeman to Newcastle, and Mr. J. H. Blair to Belfast.

Bristol will have ten assistant collectors, Halifax seven, Liverpool seven, Newcastle six, Belfast four, and the three Manchester districts nineteen. All will be placed on the permanent establishment under the direct control of Somerset House.

In bringing these collectors from the local areas into a central office, and making them Civil Servants, the Inland Revenue authorities state that "they are merely carrying out the duties imposed upon them by the Finance Act of 1927 in the simplification and assessment of income-tax."

Notes of Cases.

House of Lords.

Graigola Merthyr Co. Ltd. *v.* Swansea Corporation.

31st January.

Solicitor and Client Costs—*Quia timet* action—Public Authorities Protection Act, 1893 (56 & 57 Vict., c. 61), s. 1.

The short point involved in this case was whether s. 1 of the above Act applied to a *quia timet* action. The section provided that where, in an action "for any act done in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority," judgment was obtained by the defendant, it should carry costs to be taxed as between solicitor and client. The plaintiff company, apprehending imminent risk of damage to their colliery from a reservoir belonging to the corporation, brought this action to restrain the corporation from filling the reservoir. The action failed and was dismissed with costs. No express reference was made to the costs being as between solicitor and client, but the minutes of the order introduced that provision, and the appellants moved to omit the words "as between solicitor and client." The motion was refused by Tomlin, J., and his judgment was affirmed by the Court of Appeal.

Lord Buckmaster said that the Lord Chancellor desired him to say that he had read his opinion and agreed with its conclusions. It was true that there was no statement made in that House by which they were bound, but there were to be found precedents of very great authority, and in such a case as this it would not be right that those authorities should be set aside. With regard to the point urged that it would be impossible to define the point from which the limited period of limitation for bringing an action provided by the section began to run, and that the act done was for that purpose the same as the act that formed the basis of the action, their lordships did not think that that was an insuperable obstacle. In order to support a *quia timet* action, there must be an immediate threat to do something, and it was not impossible to fix a point of time when that threat was made. The threat must be a threat which established a right to apply for protection, and the moment when that right arose might be capable of determination. The appeal failed.

The other noble and learned lords (Lords Dunedin, Shaw and Carson) concurred.

Counsel: *Upjohn*, K.C., and *A. T. James*, K.C.; *A. Grant*, K.C., and *Valentine Holmes*.

Solicitors: *Beamish, Hanson, Airy & Co.*, for *Gwilym James, Llewellyn & Co.*, Merthyr Tydfil; *Peter Thomas and Clark*, for *H. L. Lang-Coath*, Swansea.

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

Court of Appeal.

McGee *v.* William Muir & Co.

Lord Hanworth, M.R., Lawrence and Greer, L.JJ.

25th January.

Workmen's Compensation — Assessment — Average Weekly Earnings—Sums received by Workman from Public Funds for rendering Public Services—No Right to include for Purposes of Compensation.

Appeal from a decision of the judge at Manchester County Court.

The appellant McGee was injured in the service of the respondents. His right to compensation was agreed, and the average weekly earnings with the respondents during the previous twelve months was about £2 9s.

The appellant, however, on an average of about once a fortnight, had sat as workmen's representative on the Board of Referees of the Local Employment Committee. The

respondents had approved of this, though they had the right to retain his services if they were urgently required. He was not paid by the respondents for the days he sat on the committee, but he was paid 10s. 4d. per day out of the public funds for his services. He claimed that the money so received was part of his average weekly earnings, upon the amount of which he could claim compensation. The County Court judge thought that the appellant could only claim from the respondents on the basis of the amount of wages actually paid by them. The appellant appealed. The court dismissed the appeal.

Lord HANWORTH, M.R., in the course of his judgment, cited sections of the Workmen's Compensation Act, 1925, which referred to a workman's "contract of service with his employer." Section 9 (2) directed that "weekly payments of compensation should not exceed 50 per cent. of the average weekly payments during the past twelve months, if he has been so long employed by the same employer." In *Great Western Railway Co.* v. *Helps*, 62 SOL. J. 120, 1918, A.C. 141, a railway porter had been allowed to include in his earnings certain tips which he had received from the public, but that was at anyrate money which came to him out of and because of his employment. A case nearer to the present was *Wild* v. *John Brown and Co.*, 63 SOL. J. 67, 1919, 1 K.B. 134, where a mine worker sought, without success, to include sums earned for acting as inspector under the Coal Mines Act, 1911, and as delegate of a miner's trade union. As was held in *Wild's Case*, the appellant could only include sums paid by the respondents, and earned owing to his contract of service with them.

Lords Justices LAWRENCE and GREER delivered judgments to the same effect.

COUNSEL: *Sir Henry Slesser*, K.C., *G. J. Paull* and *C. J. Graham*, for the appellant; *Edgar Dale* and *Lustgarten*, for the respondents.

SOLICITORS: *Shaen, Roscoe, Massey & Co*; *Gregory, Rowcliffe and Co.*, for *John Taylor & Co.*, Manchester.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

Horwood *v.* **Statesman Publishing Co. Limited and Others.**

Scrutton and Sankey, L.JJ. 29th January.

PRACTICE—ACTIONS FOR LIBEL—CONSOLIDATION—TWO PLAINTIFFS AGAINST SAME DEFENDANTS—RULES OF THE SUPREME COURT, 1883, ORD. XLIX, r. 8.

Appeal from an order of Macnaghten, J., in Chambers.

The plaintiff, Sir William Thomas Francis Horwood, who was then the Commissioner of Police for the Metropolis, brought an action against the defendants, the Statesman Publishing Co. Limited, the publishers; W. Speaight and Sons Limited, the printers; and Clifford Dice Sharp, the editor of a newspaper known as the *New Statesman*, claiming damages for alleged libel published in that newspaper. Another action claiming damages for the same publication was brought by Major-General Sir Borlase Edward Wyndham Childs, who was then Assistant Commissioner of Police for the Metropolis. The words complained of in both actions were published in the *New Statesman* in October, 1928, after a Royal Commission had been appointed in September, 1928, to consider the general powers and duties of the police in the investigation of crime. The defendants caused to be printed and published the following words: "If Lord Lee is not prepared to go into the question of the supervision of Hyde Park, with all the blackmail and sensation which it involves, he will find it quite impossible to restore the confidence of the public in the police. . . . Such an inquiry might be of great value if it put an end to the Horwood—Childs—Bodkin methods—an end, that is to say, to the 'Hyde Park scandals,' to the creation of crime where there is no crime, and to the attempted enforcement by the police of moral standards which have nothing whatever to do with the preservation of public order . . ." The statements of claim in both actions were nearly identical, and both plaintiffs were represented by the same counsel, instructed by the same solicitors. The defendants, the printers, pleaded an apology and payment into court; the publishers and the editor pleaded fair comment on a matter of public interest. The printers took out a summons to have the two actions consolidated under Ord. XLIX, r. 8, which provides that "Causes or matters pending in the same Division may be consolidated by order of the court or a judge in the manner in use before the 1st November, 1875, in the Superior Courts of Common Law." Master Moseley made an order consolidating the two actions. On appeal, Macnaghten, J., in Chambers, rescinded the order of the Master, holding that the court had no jurisdiction to consolidate the actions without the consent of all parties, but he expressed the view that if he had jurisdiction, the case was a proper one for consolidation.

The printers appealed.

The court (SCRUTTON and SANKEY, L.JJ.) allowed the appeal, holding that there was ample jurisdiction to order the two actions to be consolidated. It was a question for the discretion of the court, and the order of the Master directing the consolidation of the two actions must be restored. Appeal allowed.

COUNSEL: *Sir T. Willes Chitty*, K.C., and *Wallington*; *Walter Frampton*; *St. John Hutchinson* and *C. L. Burgess*; *Norman Birkett*, K.C., and *Theobald Mathew*.

SOLICITORS: *Winter & Plowman*; *Langton & Passmore*; *Theodore Goddard & Co.*

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Commissioners of Inland Revenue *v.* **Dalgety and Co., Ltd.**

Rowlatt, J. 25th January.

REVENUE—INCOME TAX—RELIEF IN RESPECT OF COLONIAL AND DOMINION INCOME TAX—INCOME CHARGED WITH INTEREST—DOUBLE TAX—FINANCE ACT, 1916, (6 & 7 Geo. 5, c. 24), s. 43.

Appeal by the Crown on a case stated by the Special Commissioners. The respondents, Dalgety & Co., Ltd., were a company incorporated in England under the Companies Acts, and carrying on business as general merchants, shipping and insurance agents, and bankers. Practically the whole of the company's income was derived from trading profits earned in Australia and New Zealand, but by reason of the control of the company being exercised in England those profits were assessed to British income tax under Case I of Sched. D. Dominion income tax had also been paid on such trading profits arising in Australia and New Zealand. They now claimed relief in respect of colonial and dominion income tax for the years ending the 5th April, 1917, to 1924, inclusive. Their claim had been admitted in part by the Commissioners of Inland Revenue, and the only point now at issue was whether the amount on which relief due to the company was to be calculated was the whole amount of the profits earned by it in Australia and New Zealand, or only the balance of such profits remaining after deducting therefrom the excess of the interest paid by it on its debentures over the amount of income arising in the United Kingdom. The Special Commissioners decided that the company were entitled to relief in respect of the whole of their trading profits earned in Australia and New Zealand. The Crown appealed.

ROWLATT, J., after referring to the delay in bringing revenue appeals, said that on the ground that income charged with the payment of interest only bore double tax so far as it exceeded the interest paid out of it, he thought that the Crown were entitled to judgment. In his opinion "income" must be taken to mean "income less charges," and the appeal was allowed.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *R. P. Hills*, for the Crown; *Latter*, K.C., and *Bremner*, for the respondents.

SOLICITORS: *Solicitor of Inland Revenue; Bircham & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

Probate, Divorce and Admiralty Division.

G—, M. A. *v.* G—, C. M.

Lord Merrivale, P. 30th July and 15th October, 1928.

DIVORCE—PRACTICE—WIFE'S UNDEFENDED PETITION FOR DISSOLUTION—CUSTODY OF CHILD BORN BEFORE MARRIAGE — KING'S PROCTOR'S SUMMONS FOR DIRECTIONS — LEGITIMACY DECLARATION ACT, 1926 (16 & 17 Geo. 5, c. 60), ss. 3 and 6—EQUITABLE RIGHT IN MOTHER TO CARE AND CONTROL OF CHILD—DIRECTION IN SUBSTITUTION OF ORDER FOR CUSTODY.

Bednall *v.* Bednall, 1927, P. 225, *reviewed and followed*.

Summons adjourned into court. This was a summons for directions in an undefended divorce suit at the instance of the King's Proctor with the object of settling the practice in respect of the granting of orders for the custody of children born out of wedlock, the marriage of whose parents is the subject of the proceedings. The facts and arguments sufficiently appear from the judgment.

Lord MERRIVALE, P., in a written judgment, said: Difficulties have arisen in this case in respect of the drawing up of this decree in a suit for divorce where the wife, the petitioner, alleged that an illegitimate child born to her before her marriage was the offspring of the respondent and was legitimated by virtue of the provisions of the Legitimacy Act, 1926. At the hearing the petitioner established her charge of adultery against the respondent and satisfied the judge that the child in question, born in 1921, was her natural child begotten by the respondent. The learned judge, Charles, J., granted the prayer of the petitioner for a decree *nisi* and directed that the petitioner should have the custody of the infant. The case was conducted under the Poor Persons Procedure and heard on circuit, and no mention was made to the learned judge of the decision of the court last year in a case of *Bednall* v. *Bednall*, 1927, P. 225, heard before Hill J., where in a considered judgment my learned brother held that an order for custody in the case of a child alleged to be legitimated by marriage of its natural parents after its birth but not already declared legitimated cannot be made except in a proceeding in which the child is represented. The attention of the King's Proctor having been drawn to the case, a summons for directions as to the form of the decree was issued. At the hearing the court had the advantage of having the relevant facts and arguments stated by the Attorney-General. Counsel for the petitioner was also heard. I ought to make it clear at once that no question arises of review of the findings of the learned judge at the hearing. What is to be dealt with is the administrative task of framing a decree which, taken with the record, shall give effect to the findings of the learned judge and be good on the face of it. The Legitimacy Act, 1926, extends legitimacy in fact to issue otherwise illegitimate. It also provides for ascertainment by legal process of status of legitimacy so introduced. An order for custody in a divorce suit for reasons which I will presently point out implies a finding of legitimacy. This was recognised in *Bednall* v. *Bednall*, *supra*. A declaration of legitimacy was there sought with a consequential grant of custody. In this present case no declaration of legitimacy was prayed, but this does not help the now petitioner. A declaration of legitimacy ascertains parentage and determines status. It establishes the relationship of parent and child with all the consequent mutual rights and liabilities, and it may introduce a new member or new members into a family or families with resultant effects of a far-reaching character not only in respect of kinship but of hereditary and successional rights. Sections 3 and 6 of the Legitimacy Act are illustrative examples of this. Obviously, then, any proceeding for declaration of legitimacy must be so constituted in respect of parties that interests obviously affected shall be represented. The first of such interests is that of the infant. Normally the person sought to be declared legitimate is personally or by guardian *ad litem* the actor in the cause or matter. Considerations of this kind lie behind the judgment in *Bednall* v. *Bednall*, *supra*. Some discussion took place at the hearing before me as to whether an order for custody in this case necessarily involves a finding or declaration of legitimacy. That this is so appears upon perusal of the statute which empowers the court to grant custody—originally the Matrimonial Causes Act, 1857, s. 35, and now the Judicature Act, 1925, s. 193. "Children" in these enactments means legitimate children in the sense that at the time of the suit they are legitimate. Ascertainment of their legitimacy is as necessary when the Legitimacy Declaration Act, 1926, is in question as it would be if parties of foreign origin who, under their native law had legitimated ante-nuptial offspring, should afterwards become naturalised or domiciled here, and be parties in a matrimonial suit. Perusal of the record and application of the reasoning of *Bednall* v. *Bednall*, *supra*, shows that an order for custody could not be made in the suit as at present constituted. Consequently, as the suit stands, no decree embodying such an order can properly be drawn up or issued. I am glad to say, however, that this difficulty as to an order for custody under the statutory powers of the court in that behalf does not necessarily dispose of the petitioner's claim to have the care and control of her child. Apart from the Legitimacy Act, 1926, the claims of the natural mother of a child born out of wedlock to have the care and control—or, as it is called in this court, the "custody" of the child—stands on a different footing from that of a putative father. Guardianship at common law she could not have, but by reason first of the acceptance under the Judicature Act of the equitable view of her claim, and by virtue of modern statutory enlargements of the powers of the courts in respect of infants, she is now in a position defined by Lord Herschell in *Barnard* v. *McHugh*, 1891, A.C. 388: "The desire of the mother of an illegitimate child as to its custody is primarily to be considered," though the court would not exercise its jurisdiction in her favour to the detriment of the child. *R.* v. *Lewis*, 9 T.L.R. 226, and *R.* v. *New*, 20 T.L.R. 515, are cases illustrative of the mode in which, before the Legitimacy Act, 1926, the court applied this rule. *Bednall* v. *Bednall*, *supra*, was a different case from this, in that there the petitioner, the husband, was alleging himself to be the natural father of a child born out of wedlock to the respondent, afterwards his wife, and seeking to deprive her of rights to which *primâ facie* she was before marriage entitled. Of her natural relationship there could be no question. As to his, the considerations arise which underlie the old saying as to a bastard, *filius nullius est*. The *primâ facie* right of the wife to the care and custody of her child must be protected, and I prefer to do this by a direction made in the exercise of the general jurisdiction of the High Court in respect of infants that until further order the child Dorothy Bessie named in the petition is to remain in the care and control of the petitioner. For the child's maintenance the Poor Law Acts, 1834 and 1857, rendered the respondent liable upon his marriage to the petitioner. If it becomes necessary, or is thought worth while to enlarge this liability, a way can no doubt be found under Poor Persons' Procedure or otherwise to secure for her the declaration of legitimacy which will enable her to make a further application in this cause in this behalf. The present suit will be still pending till the decree is made absolute, and the inadvertent omission which has given rise to the difficulty I have to deal with can no doubt be repaired without great delay or considerable expense.

COUNSEL: *The Attorney-General* (Sir Thomas Inskip, K.C.) and *Clifford Mortimer*, on behalf of the King's Proctor; *J. F. Compton Miller* for the petitioner.

SOLICITORS: *The King's Proctor; Pearce & Keele*, Southampton.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law]

In Parliament.

House of Lords.

Age of Marriage Bill [H.L.] "to make void marriages between persons either of whom is under the age of sixteen." Introduced by Lord Buckmaster and read a first time. 12th Feb.

Government Annuities Bill [H.L.]. Read a second time. 12th Feb.

Mock Auctions Bill [H.L.]. Select Committee appointed. 12th Feb.

House of Commons.

Licensing Amendment Bill "to amend the Licensing Act, 1872, and the Licensing Acts, 1910 and 1921; and for other purposes relating thereto." Read a second time. 14th Feb.

Questions to Ministers.

CHARITABLE COLLECTIONS.

Mr. WARDLAW-MILNE asked the Home Secretary whether it is his intention to introduce this Session a Bill to implement the recommendations of the inter-Parliamentary Committee in connexion with charitable collections?

Sir W. JOYNSON-HICKS: I regret that in view of the state of public business, I cannot promise to introduce a Bill this Session. 7th Feb.

HOUSING IMPROVEMENT SCHEMES (COMPENSATION).

Mr. WARDLAW-MILNE asked the Minister of Health whether it is his intention to introduce legislation this Session to amend the conditions under which compensation is paid for property included in an improvement scheme under s. 9 of the Housing, Town Planning, etc., Act, 1919, and s. 46 of the Housing Act, 1925?

Mr. SMEDLEY CROOKE asked the Minister of Health if he will take steps to carry out his conditional promise with reference to the Housing, Town Planning, etc., Act, 1919, and s. 46 of the Housing Act of 1925?

Mr. CHAMBERLAIN: I would refer my hon. Friends to the reply, a copy of which I will send to them, which was given by the Prime Minister on the 14th November last to a question on this subject by the hon. Member for Hackney Central (Sir R. Gower). 7th Feb.

LICENSED PREMISES (HOURS OF OPENING).

Commander SOUTHBY asked the Home Secretary whether the Government will consider the question of making arrangements whereby the hours of opening and closing licensed premises shall be settled by the Government for the country as a whole, observing the anomalous position which now arises in many districts through the decision being left to the various local benches?

Sir W. JOYNSON-HICKS: Such a change would require legislation, and there would certainly be diverse opinions on the point raised. 7th Feb.

COUNTY COUNCILLORS (EXPENSES).

Mr. GREENWOOD (by private notice) asked the Minister of Health whether he proposes to take the necessary steps to secure the recommittal of Clause 49 of the Local Government Bill in order to bring that Clause into harmony with the Government's proposals in the Scottish Bill as regards payment of expenses of county councillors?

The MINISTER OF HEALTH (Mr. Chamberlain): No, Sir. There appears to me to be no necessity for complete uniformity in matters of this kind in England and Scotland.

Mr. GREENWOOD: If the right hon. Gentleman is determined to persist in this anomalous state of affairs as between England and Scotland, will he put the whole of England and Wales on the same footing; and is he aware that, so far as London is concerned, Clause 49 does not apply?

Mr. CHAMBERLAIN: That is an entirely different question from the one on the Paper. 11th Feb.

PARKED CARS (LIGHTS).

Sir FRANK MEYER asked the Minister of Transport whether, under the Road Transport Vehicles Lighting Act, 1927, motorists have been absolved from keeping lights on at any of the recognised parking places in the Metropolitan area?

Colonel ASHLEY: Under the Road Vehicles Lighting Regulations, 1928, the power to exempt from the lighting requirements vehicles standing in recognised parking places in the Metropolitan Police area is vested in the Commissioner of Police who, I understand, has not up to the present thought it desirable to exercise his powers in this respect. 11th Feb.

MOTOR LORRIES AND CYCLES (LIGHTS).

Mr. DAY asked the Minister of Transport whether his attention has been drawn to the coroner's remarks at an inquest held at Enfield on Patrick Eaton Robinson and James Collins, who were killed by a motor lorry while cycling on the Cambridge arterial road, at which inquest it was stated that the lamps on the lorry were too high to shine on the rear reflectors of the cycles, and the coroner stated he had drawn the attention of the Home Office to this defect in the law; and will he consider introducing amending legislation to have this defect remedied?

Colonel ASHLEY: The answer to the first part of the question is in the negative. As regards the latter part of the question, the Road Vehicles Lighting Regulations, 1928, lay down for reflectors such optical requirements as to reflection and dispersion of light as to permit of considerable latitude in the position of the lamps on an overtaking vehicle. 12th Feb.

PENNY POST.

Mr. SOMERVILLE asked the Postmaster-General whether, in conntxion with the success obtained by New Zealand in establishing a penny post to the rest of the Empire and the promising start made by Canada in the same direction, there has been since 1923 any increase in the volume of postage correspondence between these Dominions and Great Britain?

Sir W. MITCHELL-THOMSON: The net weight of letter mails to and from New Zealand and the United Kingdom has increased since 1923, but how much of the increase has been due to normal growth and how much to reduction in rates cannot be estimated. So far as Canada is concerned, no figures are yet available which would indicate whether or not the traffic has increased since penny postage was restored. 12th Feb.

Societies.

Law Students' Debating Society.

A meeting of the Society was held at The Law Society's Hall on Tuesday, 5th inst. (Chairman, Mr. W. M. Pleadwell), when the subject for debate was "That this House deplores the decision of the House of Lords in the case of *Bevan* v. *Nixon's Navigation Co., Ltd.*, 1929, 1 A.C. 44." Mr. S. H. Levine opened in the affirmative, and was seconded by Mr. H. F. C. Morgan, whilst Mr. C. C. Ross opened in the negative and was supported by Miss C. Morrison. The following members having spoken, Messrs. V. R. Aronson, G. A. Thesiger, J. Christian Edwards, H. W. Daniels, P. E. Roberton, C. N. Bushell, and the opener having replied, the chairman summed up, and the motion on being submitted was lost by one vote. There were fifteen members and one visitor present.

Rules and Orders.

THE RENT (RESTRICTIONS) RULES, 1928, DATED DECEMBER 22, 1928, MADE BY THE LORD CHANCELLOR UNDER THE RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACTS, 1920 TO 1925 (10 & 11 GEO. 5. C. 17; 13 & 14 GEO. 5. C. 32; 14 & 15 GEO. 5. C. 18; AND 15 & 16 GEO. 5. C. 32).

1. Paragraphs (2), (3), (4) and (5) of Rule 16 of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, (*) are hereby revoked and the following paragraph, which shall stand as paragraph (2) of that Rule shall be substituted therefor:—

"(2) The Court may either fix the amount of such costs, or direct the scale upon which they are to be taxed. In the event of their not being so fixed or of no such direction being given they shall be taxed upon Column A of the Higher Scale."

2. These Rules may be cited as the Rent (Restrictions) Rules, 1928, and the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, as amended, shall have effect as further amended by these Rules.

Dated the 22nd day of December, 1928.

Hailsham, C.

(*) S.R. & O. 1920 (No. 1261) I. p. 1072.

THE SUPREME COURT FEES (AMENDMENT NO. 2) ORDER, 1928. DATED DECEMBER 21, 1928.

The Lord Chancellor, the Judges of the Supreme Court and the Treasury, in pursuance of the powers and authorities vested in them respectively by section 213 of the Supreme Court of Judicature (Consolidation) Act, 1925,(*a*) and sections 2 and 3 of the Public Offices Fees Act, 1879,(*b*) do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require them, make, advise, consent to, and concur in the following Order :—

1. After Fee No. 17 in the Schedule to the Supreme Court Fees Order, 1924,(*c*) there shall be inserted the following new fee which shall stand as Fee No. 17A :—

First Column.	Second Column.	Third Column.
Item.	Fee.	Document to be stamped.
	£ s. d.	
"17A. For an examination as to the means of a judgment debtor under Order XLII. Rule 32 or Rule 33, before an Examiner of the Court :—		
(*a*) on making the appointment	1 5 0	The Order.
(*b*) for each hour or part of an hour after the first two hours	0 10 6	The Order."

2. This Order may be cited as the Supreme Court Fees (Amendment No. 2) Order, 1928, and shall come into operation on the 11th day of January, 1929, and the Supreme Court Fees Order, 1924, as amended shall have effect as further amended by this Order.

Dated the 21st day of December, 1928.

Hailsham, C. *Hanworth*, M.R.
Hewart, C.J. *Merrivale*, P.
David Margesson, *F. George Penny*, } Lords Commissioners of His Majesty's Treasury.

(*a*) 15-6 G. 5. c. 49. (*b*) 42-3 V. c. 58. (*c*) S.R. & O. 1924 (No. 966) p. 17 12.

MASTER AND SERVANT.

THE WORKMEN'S COMPENSATION (SILICOSIS) RULES, 1929. DATED JANUARY 23, 1929.

1. In paragraph (6) of Rule 41 of the Workmen's Compensation Rules, 1926,* the expression " or the Various Industries (Silicosis) Scheme, 1928," shall be inserted after the expression " the Metal Grinding Industries (Silicosis) Scheme, 1927."

2. These Rules may be cited as the Workmen's Compensation (Silicosis) Rules, 1929, and the Workmen's Compensation Rules, 1926, as amended by the Workmen's Compensation (Silicosis) Rules, 1927,† and the Workmen's Compensation (Danish Convention) Rules, 1927,‡ shall have effect as further amended by these Rules.

We hereby submit these Rules to the Lord Chancellor.

W. M. Cann. *T. Mordaunt Snagge.*
J. W. McCarthy. *Barnard Lailey.*
S. A. Hill Kelly.

I allow these Rules, which shall come into force on the 1st day of February, 1929.

Dated the 23rd day of January, 1929.

Hailsham, C.

* S.R. & O. 1926 (No. 448), p. 829. † S.R. & O. 1927 (No. 392), p. 747.
‡ S.R. & O. 1927 (No. 339), p. 748.

THE RATING AND VALUATION (APPORTIONMENT) ACT (SPECIAL LIST) (AMENDMENT) RULES, 1929, DATED 30TH JANUARY, 1929, MADE BY THE MINISTER OF HEALTH UNDER SECTION 58 OF THE RATING AND VALUATION ACT, 1925 (15 & 16 GEO. 5, C. 90) AS APPLIED BY SECTIONS 7 (1) (C) AND 10 (2) OF THE RATING AND VALUATION (APPORTIONMENT) ACT, 1928 (18 & 19 GEO. 5, C. 44).

73201.

Whereas by the Rating and Valuation (Apportionment) Act (Special List) Rules, 1928(*a*) (hereinafter referred to as " the Rules of 1928 ") the Minister of Health in pursuance of the powers conferred upon him by the Rating and Valuation Act, 1925 and the Rating and Valuation (Apportionment) Act, 1928 (hereinafter referred to as " the Act of 1925 " and " the Act of 1928 " respectively) prescribed, inter alia, certain times or dates to be observed in connection with the preparation and approval of lists under the First Schedule to the Act of 1928 ;

And whereas circumstances have arisen which render it desirable that certain of the times or dates so prescribed should be varied :

Now therefore, the Minister of Health by virtue of the powers conferred upon him by the Act of 1925 and the Act of 1928 and of all other powers enabling him in that behalf hereby makes the following rules :—

(*a*) S.R. & O. 1928, No. 627.

1. These rules may be cited as the Rating and Valuation (Apportionment) Act (Special List) (Amendment) Rules, 1929, and shall come into operation on the date hereof.

2. Notwithstanding anything contained in the Rules of 1928 the prescribed time or date for the purpose of the proceedings specified in the first column of the Schedule hereto shall be that specified in the second column of that Schedule.

3. Nothing in these Rules shall affect the prescribed time or date for any proceeding other than those specified in the Schedule hereto.

SCHEDULE.

Proceeding.	Prescribed Time or Date.
Time within which claims must be sent to the Rating Authority (Paragraph 1 of Schedule 1 of the Act of 1928).	Before the 1st April, 1929.
Date, on or before which a copy of the preliminary draft special list or of the final instalment thereof, must be sent to the Revenue Officer (Paragraph 3 of Schedule 1 of the Act of 1928)	15th April, 1929.

Given under the Official Seal of the Minister of Health, this thirtieth day of January, in the year One thousand nine hundred and twenty-nine.

(L.S.) *R. B. Cross*,
Assistant Secretary, Ministry of Health.

THE COUNTY COURT (NO. 3) RULES, 1928. DATED DECEMBER 22, 1928.

1. These Rules may be cited as the County Court (No. 3) Rules, 1928, and shall be read and construed with the County Court Rules, 1903,(*a*) as amended.

An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1903, as amended. The Appendix referred to in these Rules is the Appendix to the County Court Rules, 1903, as amended.

The County Court Rules, 1903, as amended, shall have effect as further amended by these Rules.

2. In Rule 4 of Order V the following words shall be inserted after the word " plaintiff " where it first occurs in paragraph (*a*) :—

" and if the plaintiff is a female, a statement whether she is married, single or a widow, and if she is married, the full names of her husband."

3. In Rule 4 of Order X and also in Rule 5 of that Order, the words " in an action of ejectment twelve clear days, and in an action for the recovery of possession " and the words " in an action of ejectment ten clear days, and in an action for the recovery of possession " shall be omitted.

4. Rule 11 of Order XXIIA is hereby revoked and the following Rule shall be substituted therefor :—

" 11. Order X, Rules 4 and 5, as to actions of ejectment or for recovery of possession of tenements, shall be read as if the words ' ten clear days ' and ' eight clear days ' respectively were substituted therein for the words ' five clear days ' and ' three clear days ' respectively."

5. In paragraphs (1) and (2) of Rule 1 of Order XXVII the words " the hand of the high bailiff and " shall be omitted.

6. In forms 6, 6A and 7 in Part I of the Appendix, after the words " Occupation or description " where those words firstly occur, the following words shall be inserted as a separate paragraph :—

" If plaintiff is a female, state whether married, single or a widow, and if married, state the full names of her husband."

7. In Form 252 in Part I of the Appendix the expression " 209 of 15 & 16 Vict. c. 76 " shall be omitted and the expression " 145 of 15 Geo. 5. c. 20 " shall be substituted therefor.

8. The number " 175 " in paragraph 1 of Part V of the Appendix shall be omitted.

We, the undersigned persons appointed by the Lord Chancellor pursuant to section one hundred and sixty-four of the County Courts Act, 1888,(*b*) and section twenty-four of the County Courts Act, 1919,(*c*) to frame Rules and Orders for regulating the practice of the Court and forms of proceedings therein, having by virtue of the powers vested in us in this behalf framed the foregoing Rules, do hereby certify the same

(*a*) S.R. & O. Rev. 1904, III County Court E., p. 80 (1903 No. 629).
(*b*) 51-2 Vict. c. 43. (*c*) 9-10 Geo. 5. c. 73.

under our hands and submit them to the Lord Chancellor accordingly.

W. M. Cann. *T. Mordaunt Snagge.*
J. W. McCarthy. *A. O. Jennings.*
Hugh Sturges. *A. H. Coley.*
S. A. Hill Kelly.

Approved by the Rules Committee of the Supreme Court.
Claud Schuster.
Secretary.

I allow these Rules which shall come into force on the 1st day of January, 1929.
Dated the 22nd day of December, 1928.
Hailsham, C.

Legal Notes and News.

Honours and Appointments.

Mr. NOAH A. RIGBY, Solicitor, St. Helens, has been appointed by the Lord Chancellor to be a Commissioner to administer Oaths. Mr. Rigby was admitted in 1922.

Mr. CECIL R. HARTLEY, B.A. (Cantab.), Solicitor, Rochdale, has been appointed Clerk to the Rochdale Justices. Mr. Hartley was admitted in 1914.

Mr. D. LLEUFER THOMAS, LL.D., Barrister-at-Law, Stipendiary Magistrate of Pontypridd, was at the recent Epiphany Sessions elected Vice-Chairman of the Glamorganshire Quarter Sessions.

The Cowbridge Corporation have conferred the freedom of the borough upon their Town Clerk, Mr. WILLIAM T. GWYN, Solicitor, who has held that position for thirty-six years. Mr. Gwyn was admitted in 1883.

Professional Partnerships Dissolved.

FREDERICK JOHN MANNING and ENOS HERBERT GLYNNE ROBERTS, solicitors, St. Michael's House, Basinghall-street, E.C.2 (Jones, Hall and Manning), as from 31st December, by mutual consent. The business will be carried on in future by F. J. Manning under the style of Jones, Hall & Manning.

Professional Announcements.

(2s. per line.)

Messrs. JOHN B. PURCHASE & CLARK, solicitors, 50, Pall Mall, London, S.W.1, announce with regret the death of their Mr. Frank Purchase (after a brief illness), which took place on the 9th inst. The practice will in future be carried on at the above address by Mr. John B. Purchase and Mr. Henry Clark.

CANVASSING FOR CLIENTS.

We have now been informed by Messrs. A. E. Hamlin & Co., whose letter appeared in our last issue (73 SOL. J., p. 89) that the Agricultural Mortgage Corporation, Limited, now propose to arrange for examination of titles, etc., to be carried out by local solicitors.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
M'nd'y Feb. 18	Mr. Ritchie	Mr. Hicks Beach	Mr. More	Mr. Hicks Beach
Tuesday .. 19	Bloxam	Blaker	Hicks Beach	*Bloxam
Wednesday 20	Jolly	More	Bloxam	More
Thursday . 21	Hicks Beach	Ritchie	More	*Hicks Beach
Friday 22	Blaker	Bloxam	Hicks Beach	Bloxam
Saturday .. 23	More	Jolly	Bloxam	More
	Mr. Justice Maugham.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
M'nd'y Feb. 18	Mr. Bloxam	Mr. Jolly	Mr. *Ritchie	Mr. Blaker
Tuesday .. 19	*More	Ritchie	Blaker	*Jolly
Wednesday 20	*Hicks Beach	Blaker	*Jolly	*Ritchie
Thursday . 21	*Bloxam	Jolly	Ritchie	*Blaker
Friday 22	*More	Ritchie	*Blaker	Jolly
Saturday .. 23	Hicks Beach	Blaker	Jolly	Ritchie

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5½%. Next London Stock Exchange Settlement Thursday, 21st February, 1929.

	Middle Price 13th Feb.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	86	4 13 0	—
Consols 2½%	55½	4 10 6	—
War Loan 5% 1929-47	102	4 18 0	4 17 6
War Loan 4½% 1925-45	98	4 12 0	4 13 6
War Loan 4% (Tax free) 1929-42	101¼	3 19 0	3 19 6
Funding 4% Loan 1960-1990	89	4 10 0	4 10 6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94	4 5 0	4 7 6
Conversion 4½% Loan 1940-44	98	4 11 6	4 11 6
Conversion 3½% Loan 1961	78	4 9 6	—
Local Loans 3% Stock 1921 or after	64½	4 13 0	—
Bank Stock	262	4 13 0	—
India 4½% 1950-55	91½	4 18 0	5 1 6
India 3½%	70	5 0 0	—
India 3%	60	5 0 0	—
Sudan 4½% 1939-73	94½	4 15 0	4 15 0
Sudan 4% 1974	87	4 12 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	82½	3 12 0	4 8 0
Colonial Securities.			
Canada 3% 1938	86	3 9 6	4 16 0
Cape of Good Hope 4% 1916-36	94	4 5 0	4 19 6
Cape of Good Hope 3½% 1929-49	81	4 6 6	4 18 6
Commonwealth of Australia 5% 1945-75	98	5 2 0	5 2 0
Gold Coast 4½% 1956	96	4 13 6	4 17 6
Jamaica 4½% 1941-71	96½	4 13 0	4 17 6
Natal 4% 1937	93	4 6 0	5 0 0
New South Wales 4½% 1935-45	90	5 0 0	5 6 0
New South Wales 5% 1945-65	98	5 2 0	5 3 0
New Zealand 4½% 1945	96	4 14 0	4 17 6
New Zealand 5% 1946	102	4 18 0	4 16 0
Queensland 5% 1940-60	98	5 2 0	5 2 0
South Africa 5% 1945-75	103	4 17 0	4 16 0
South Australia 5% 1945-75	98	5 2 0	5 2 0
Tasmania 5% 1945-75	100	5 0 0	5 0 0
Victoria 5% 1945-75	98	5 2 0	5 0 0
West Australia 5% 1945-75	98	5 2 0	5 2 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	64	4 13 6	—
Birmingham 5% 1946-56	104	4 16 0	4 15 0
Cardiff 5% 1945-65	103	4 17 0	4 16 6
Croydon 3% 1940-60	72	4 3 6	4 16 0
Hull 3½% 1925-55	79	4 8 6	5 0 0
Liverpool 3½% Redeemable at option of Corporation	75	4 13 6	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54	4 12 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64	4 13 6	—
Manchester 3% on or after 1941	64	4 14 0	—
Metropolitan Water Board 3% 'A' 1963–2003	66	4 11 0	4 12 6
Metropolitan Water Board 3% 'B' 1934–2003	66	4 10 0	4 12 6
Middlesex C. C. 3½% 1927–47	83	4 5 0	4 17 0
Newcastle 3½% Irredeemable	73	4 16 0	—
Nottingham 3% Irredeemable	64	4 13 0	—
Stockton 5% 1946–66	102	4 18 0	4 19 0
Wolverhampton 5% 1945–56	103	4 17 0	4 19 9
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81½	4 18 0	—
Gt. Western Rly. 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	96½	5 3 6	—
L. & N. E. Rly. 4% Debenture	77½	5 3 0	—
L. & N. E. Rly. 4% Guaranteed	72½xd	5 10 0	—
L. & N. E. Rly 4% 1st Preference	64	6 4 6	—
L. Mid. & Scot. Rly. 4% Debenture	79	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	79	5 1 0	—
L. Mid. & Scot Rly. 4% Preference	72½	5 10 0	—
Southern Railway 4% Debenture	79	5 1 0	—
Southern Railway 5% Guaranteed	100	5 0 0	—
Southern Railway 5% Preference	93	5 7 6	—